

## Ottawa & Ontario Announce Slew of Environmental Initiatives

Maybe there's an election (or two) in the air. Maybe the environment has finally reached the top of the legislative queue. Whatever the reason, Ottawa and Ontario have released an unprecedented flurry of new and important environmental statutes, regulations, policies and guidelines over the last three months.

Among the housekeeping amendments and routine updates of on-going programs, there have been some major announcements that will change the face of environmental management in this country. These include Ontario's new environmental penalty regulations, which allow MOE to levy heavy fines without the bother of going to court, new spill prevention planning and reporting requirements, which are setting the standard for environmental due diligence, a new provincial waste management policy and streamlined EAA waste project approvals. There are also new federal requirements for emergency planning, much tougher species-at-risk legislation, a renewed commitment to nuclear power, and more.

We will cover some of these in more depth in future. In the meantime, call any of our lawyers. You'll find our names, numbers and pictures at [www.willmsshier.com](http://www.willmsshier.com)

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Initiative	Description	Takes Effect
Amendments to the Environmental Emergency Regulations (SOR / 2003-307) under the <i>Canadian Environmental Protection Act, 1999</i>	<b>Petrochemical companies, farmers, mines and smelters, dry cleaners, and those that use or produce propane or specialty chemicals will be significantly impacted by these amendments.</b> The amendments would add 34 CEPA-toxic substances and "other substances of concern" (i.e., acetic acid, ammonium nitrate and styrene) to Schedule 1 of the regulations, triggering the need for environmental emergency planning by facilities that own or have control of more than the set threshold quantity of these substances. Additional amendments cover reporting requirements, regulate propane storage and the decommissioning of facilities, exempt mine tailings and certain fertilizers used by farmers, and "increase the clarity of the text and reduce the administrative burden."	Notice in the <i>Canada Gazette</i> June 9, 2007.  Closing date for comments Aug. 8, 2007.  The amendments would take effect on the day they are registered.
Proposed Storage Tank Systems for Petroleum Products and Allied Petroleum Products Regulations, under <i>CEPA, 1999</i>  Would replace the Federal Registration of Storage Tank Systems for Petroleum Products and Allied Petroleum Products on Federal Lands and Aboriginal Lands Regulations (SOR / 97-10)	<b>Ottawa has expanded its storage tank requirements beyond a simple inventory system to ensure it can compel the repair or removal of leaking tanks.</b> The proposed Regulations would apply to storage tank systems owned or operated by federal departments, boards, agencies and Crown corporations, port authorities, railways and airports, and those located on federal and Aboriginal lands. They would also apply to suppliers of petroleum products to such systems. The new regulations would address gaps in the existing requirements, including the power to withdraw leaking storage tank systems from service for repair and the permanent removal of high-risk systems, mandatory leak detection testing, requirements for the product transfer area, standards for the design and installation of new systems, a tank identification system, record keeping, and leak notification and other duties for suppliers.	Notice in the <i>Canada Gazette</i> April 7, 2007, and the deadline for comments closed June 6, 2007.  Following promulgation, owners have 2-4 years to remove prescribed tanks from service.
Second Batch of Substances under federal Chemicals Management Plan (CMP)  (Visit <a href="http://www.chemicalsubstances.gc.ca">www.chemicalsubstances.gc.ca</a> for details.)	<b>This 2nd batch includes some widely used substances: bisphenol A, thiourea, epichlorohydrin, isoprene, vinyl acetate, and a couple of pigments (Red 104 and Yellow 34).</b> A <i>CEPA</i> s.71 notice requires importers, manufacturers and certain users of 15 of the 17 compounds in the 2nd batch of CMP substances to submit certain information needed to assess the toxicity of the substances and/or their appropriate management and control.  Ottawa has released technical profiles for all 17 substances in the second batch. Interested stakeholders may submit any information that may be used to inform risk assessment and develop and benchmark best practices.	Notice in the <i>Canada Gazette</i> May 12, 2007.  s.71 reports must be submitted by Sept. 12, 2007.  CMP questionnaires must be submitted by Nov. 17, 2007.
Third Batch of Substances under federal Chemicals Management Plan	<b>And the 3rd batch is coming in August.</b> The substances that will comprise the third batch of the CMP were identified in a Notice published in the <i>Canada Gazette</i> .	Notice in the <i>Canada Gazette</i> May 12, 2007.



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<p>Environmental Penalties regulation (O. Reg. 222/07) under the <i>Environmental Protection Act (EPA)</i>, and Environmental Penalties regulation (O. Reg. 223/07) under the <i>Ontario Water Resources Act (OWRA)</i></p>	<p><b>When Bill 133, the <i>Environmental Enforcement Statute Law Amendment Act</i>, passed in June 2005, the MOE was given the authority to impose Environmental Penalties (EPs) for spills without the bother of going to court.</b> The Ministry is phasing in those financial EPs, in two stages, over the next 18 months. Both the EPA and OWRA regulations embody the same concepts and follow the same format. They set forth the details of how, when and to which types of violations (industrial spills, unlawful discharges, and other contraventions) EPs will be applied, and how the funds raised can be used. The EP regulations will apply to 148 facilities in the Municipal-Industrial Strategy for Abatement (MISA) industrial sectors whose operations discharge directly into a surface water body. They will also apply to new facilities (if they are direct dischargers) in eight MISA sectors.</p> <p>Additional guidance is found in the <i>Guideline for Implementing Environmental Penalties</i> (described below) and MOE's updated <i>Compliance Policy: Applying Abatement and Enforcement Tools</i>. Other relevant documents include <i>Procedure for the Calculation of the Monetary Benefit Component of EPs</i>, and <i>Settlement Agreements — A Guide to Submitting Beyond Compliance Projects and Requesting Abatement Measures</i>.</p>	<p>Proposal posted on Registry Oct. 6, 2006. Decision posted June 8, 2007.</p> <p>Phase I of regulations (covering major violations) in force on Aug. 1, 2007, and Phase II takes effect on Dec. 1, 2008.</p>
<p><i>Guideline for Implementing Environmental Penalties</i>, in accordance with O. Reg. 222/07 and 223/07, under the <i>EPA</i> and <i>OWRA</i></p>	<p><b>A company hit with an EP order can have the amount of the penalty reduced, based on the actions it took before, during and after an incident.</b> This Guideline provides an explanation of EPs, which companies are subject to EPs, types of EP violations, a step-by-step guide to the EP process, calculation of the EP amount, and a description of key process and appeal components.</p>	<p>Guideline dated May 2007, and posted on the Registry June 8, 2007.</p>
<p><i>Environmental Penalties – Code of Toxic Substances</i>, as referred to in O. Reg. 222/07 and 223/07, under the <i>EPA</i> and <i>OWRA</i></p>	<p><b>If a spill or other violation involves a prescribed “toxic” chemical, a Director issuing the EP order will increase the gravity component of the penalty by 35%.</b> This Code defines and lists the toxic compounds that trigger that increase, and is housed outside of the EP regulations so that it can be readily amended. The list of toxic substances in the document currently includes 113 substances that are non-gaseous, persistent, bioaccumulative and inherently-toxic to humans (PBIT).</p>	<p>Code published May 2007, and posted on the Registry June 8, 2007.</p>
<p>Spill Prevention and Contingency Plans regulation (O. Reg. 224/07), under the <i>EPA</i></p>	<p><b>The spill planning regulation applies specifically to existing and new facilities in the nine industrial sectors subject to the MISA regulations made under the <i>EPA</i>.</b> The regulation sets forth the requirements for developing and implementing spill prevention and contingency plans, the information such plans must include (in s.4), record keeping and notification requirements, a duty to undertake annual reviews and tests of the plan, and reassessment of the plans after a spill. Additional guidance is found in the <i>Guideline for Implementing Spill Prevention and Contingency Plans Regulatory Requirements</i> (described below).</p>	<p>Made May 16, 2007, and printed in <i>The Ontario Gazette</i> June 23, 2007. In force Sept. 1, 2008.</p>
<p><i>Guideline for Implementing Spill Prevention and Contingency Plans Regulatory Requirements</i>, in accordance with O. Reg. 224/07, under the <i>EPA</i></p>	<p><b>Many of the factors considered for EP reductions (under s.16 of O. Reg. 222/07 and s. 15 of O. Reg. 223/07) are also components of a spill prevention and contingency plan.</b> This Guideline is designed primarily for companies that must develop and implement these plans under O. Reg. 224/07. It explains key terms and provides guidance on the development and implementation of the plans (including plan components, hazard identification, risk analysis and priority ranking, contingency planning, reporting, spill response, environmental restoration, annual reviews and updates).</p> <p>The Guideline is also of use to facilities exempt from O. Reg. 224/07 (i.e., commercial businesses, non-MISA industries, municipalities, etc.) in establishing Class X non-reportable spill thresholds under O. Reg. 675/98. It is a useful resource for implementing spill prevention and/or contingency plans for due diligence and EMS purposes.</p>	<p>Guideline dated May 2007, and posted on the Registry June 8, 2007.</p>
<p>Classification and Exemption of Spills and Reporting of Discharges (O. Reg. 225/07, amending O. Reg. 675/98), under the <i>EPA</i></p>	<p><b>This regulation amends the reporting and notification provisions of the existing spills reporting regulation (O. Reg. 675/98).</b> It replaces the provisions relating to Class X, “Non-Reportable Spills”, and adds a new Part II, “Reporting of Spills”, which set out notification requirements under s.15(1) and s.92(3) &amp; (4) of the <i>EPA</i>, as well as the information that must be provided to the MOE’s Spills Action Centre. Additional guidance is found in <i>Spills Reporting: A Guide to Reporting Spills and Discharges</i> (described below). Companies that have potential for spills should retrain first contact employees and review spill investigation and reporting procedures and documentation.</p>	<p>Spill reporting provisions in force Aug. 1, 2007. Changes to Class X non-reportable spill provisions in force Sept. 1, 2008.</p>
<p><i>Spills Reporting -- A Guide to Reporting Spills and Discharges</i>, as required by s.92 and s.15 of the <i>EPA</i> and O. Reg. 675/98</p>	<p><b>This Guide summarizes who must report, who must be notified, when to report, and mandatory reporting details.</b> The Guide offers practical guidance for the classification of spills and exemptions, and explains in greater detail MOE’s interpretation of the spill reporting provisions under s.92 of the <i>EPA</i>, and discharges that must be reported under s.15(1) of the <i>EPA</i> and the new O. Reg. 675/98 reporting requirements.</p>	<p>Guideline dated May 2007, and posted on the Registry June 8, 2007.</p>
<p>Ontario’s <i>Guidelines for Environmental Protection Measures at Chemical and Waste Storage Facilities</i></p>	<p><b>The first update since 1978, this Guideline is used by MOE staff to develop C of As, promote abatement measures on inspection, draft orders, and respond to spills.</b> It is also designed to help the owners and operators of chemical and waste storage facilities assess the necessary environmental protection measures, plan upgrades to existing storage areas, and design and operate new facilities. A C of A may require the development of an Operations and Maintenance Manual to be based on the Guidelines spelled out in this document.</p>	<p>Draft version circulated in April 2005. Final version published June 2007.</p>



Initiative	Description	Takes Effect
<p>Bill 198, <i>Safeguarding and Sustaining Ontario's Water Act, 2007</i></p> <p>Amends the <i>Ontario Water Resources Act</i>, and the <i>Safe Drinking Water Act, 2002</i>. Repeals the unproclaimed <i>Water Transfer Control Act</i>.</p>	<p><b>Ontario is set to impose a modest "water conservation charge" for commercial and industrial water users, as well as require permits for users that were grandfathered into the current system.</b> The Act implements the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, provides a statutory basis for Ontario's existing ban on diversions of the Great Lakes-St. Lawrence River, Nelson and Hudson Bay basins, and prohibits new or increased diversions from one Great Lake watershed to another (subject to certain regulated exceptions). It also amends the <i>OWRA</i>, to clarify and update the types of conditions that can be imposed through Permits-To-Take-Water, and to require PTTWs for water takings over 50,000 L/d and for takings that started before March 29, 1961 (which are currently exempt). Future regulations would set the water charges and phase-in schedule (the province is proposing to begin charging "highly consumptive industrial and commercial users" \$3.71/ million L), as well as requirements for water conservation and water use efficiency, and standards for proposed water withdrawals and large consumptive water uses.</p>	<p>Received Royal Assent June 4, 2007.</p> <p>Comes into force upon Royal Assent, except for s.1(6), (8), (9), (11), (12), (17), (18), (19), (22), (23), (27), (29)-(36) and s.2</p>
<p>Bill 184, <i>Endangered Species Act, 2007</i></p> <p>The existing <i>Endangered Species Act</i> is repealed.</p>	<p><b>ENGOs strongly support the new Act, while landowners are concerned by the automatic protection provisions for habitat (even with a five-year transition provision for species already listed as threatened or endangered).</b> The Act requires the identification and classification (in regulation) of "species at risk" as extinct, extirpated, endangered, threatened or special concern. Following listing, a species and its habitat are accorded special protections and prohibitions according to its classification. If a species is listed as an endangered or threatened species, the Act prohibits damaging or destroying the habitat of the species (as prescribed by definition or regulation). In addition, MNR is required to prepare a recovery strategy (and a description of the actions the government will take) for each species listed as endangered or threatened, and a management plan for each species listed as a special concern species. MNR may enter into agreements for the purpose of assisting in the protection or recovery of species, as well as permits that authorizes a person to engage in an activity that would otherwise be prohibited. Special provisions govern agreements and permits relating to aboriginal people.</p>	<p>Received Royal Assent May 17, 2007.</p> <p>Comes into force, with certain exceptions, on June 30, 2008, or such earlier day as may be named by proclamation.</p>
<p>Ontario Bill 187, <i>Budget Measures and Interim Appropriation Act, 2007</i></p> <p>Brownfields amendments to the <i>EPA, OWRA, Escheats Act</i>, and the <i>Proceedings Against the Crown Act</i>.</p>	<p><b>Ontario moves quickly to address brownfield liability concerns for municipalities and provincial agencies.</b> The <i>EPA</i> amendments (contained in Schedule 13 of the Act) will also protect innocent owners when contaminants migrate off-site after the certification date, change how records of site condition (RSCs) are processed and notices are filed, and require owners to retain copies of certain reports. Municipalities gain protection from civil lawsuits arising from issuance of building permits when there was "inaccuracies" in an RSC. In addition, amendments to the <i>Escheats Act</i> give the Crown first priority in recovering any fees and expenses on forfeited property (except for certain deemed trusts and municipal property taxes). The Crown is also protected against torts related to orphaned properties or any actions it takes to investigate and secure such properties.</p>	<p>Received Royal Assent May 17, 2007.</p> <p>New RSC filing procedures and off-site rules will not take effect until regulations have been drafted.</p>
<p><i>Clean Water Act, 2006</i> and first phase of Source Protection Regulations</p>	<p><b>Proposed regulations map out protection areas and regions, set ground rules, and assign responsibilities for source water protection planning.</b> The regulations would establish the boundaries and names of each source protection area and region, and designate a lead authority in each region; set the rules for the composition and operation of source protection committees; set the requirements for the terms of reference for local drinking water source protection planning; specify what types of drinking water systems cannot be included in the source protection planning process; set the protocol for notifying the ministry if a drinking water hazard that poses a threat to human health is discovered; and set timelines for the source protection planning process.</p>	<p>Act Proclaimed in force July 3, 2007.</p> <p>First phase regulations in effect July 3, 2007</p>
<p>Final Report of the Advisory Panel on the Ontario Drinking Water Stewardship Program, in accordance with the <i>Clean Water Act, 2006</i></p>	<p><b>Panel proposes how province can help farmers and small rural businesses take action to reduce threats to local drinking water sources.</b> The Advisory Panel has provided its recommendations on how the Ontario Drinking Water Stewardship Program should be administered and funding allocated. The Report sets out the principles to be used in establishing the cost-sharing framework, prioritizing the type and scope of activities that could be supported financially, and supporting program delivery and education and outreach efforts. In 2007-08, \$7 million will be available under the program, with an additional \$21 million allocated over the next three years.</p>	<p>Notice on the Registry June 14, 2007.</p>
<p>Ontario's Policy Statement on Waste Management Planning</p>	<p><b>The Policy establishes Ontario's expectations for municipal waste management and provides specific direction on the development of long-term (20 to 25-year) municipal waste management plans. 60% diversion for municipalities will be Ontario's policy.</b> The Statement promotes: transparent decision-making by waste managers within the context of infrastructure planning, integrated waste management, maximum diversion from final disposal, cooperation (between public and private sectors, and neighbouring municipalities), producer responsibility, and management of waste as close to the source as possible. Large municipalities (populations of 100,000 or greater) are to develop municipal waste plans within 2 years of this Statement being finalized, while small municipalities are given 2.5 years. Existing plans should be amended to comply with the principles set out in this Statement.</p>	<p>Posted on Registry June 12, 2007, with deadline for comments of July 27, 2007.</p>



Initiative	Description	Takes Effect
<p>Ontario's Municipal Hazardous or Special Waste (MHSW) Program Plan, under the <i>Waste Diversion Act, 2002</i></p>	<p><b>Under a proposed waste diversion plan, brand owners and first importers of products that result in MHSW will be responsible for paying stewardship fees, unless they develop acceptable "Industry Stewardship Plans"</b>. The draft MHSW diversion plan developed by Waste Diversion Ontario (WDO) targets certain categories of waste (Phase 1 would address paints, solvents, oil filters, oil containers, single use batteries, antifreeze, propane cylinders and other pressurized containers, fertilizers, and pesticides) from homes and small quantity wastes (less than 100 kg/mo) from IC&amp;I businesses. The WDO plan would require a new regulation to address Stewardship Ontario's revised governance structure (to levy fees on stewards), and amendments to the Blue Box Waste regulation (O. Reg. 273/02) and the MHSW regulation (O. Reg. 542/06). The WDO Plan also lists proposed Phase 2 substances (including mercury switches, aerosol cans, and fluorescent bulbs and tubes).</p>	<p>Posted on Registry June 11, 2007, with deadline for comments of July 11, 2007.</p>
<p>Final versions of three Codes of Practice and a Federal-Provincial Coordination Guide, under the <i>Environmental Assessment Act (EA Act)</i></p>	<p><b>Over the past year, MOE has posted a series of documents to support the EA Act and better clarify the duties of proponents.</b> The Ministry has recently finalized three Codes of Practice: (1) <i>Consultation in Ontario's EA Process</i>, (2) <i>Using Mediation in Ontario's EA Process</i>, and (3) <i>Preparing and Reviewing Terms of Reference for EAs in Ontario</i>. MOE has also released the final version of <i>Federal/Provincial EA Coordination: A Guide for Proponents and the Public</i>. Following posting of the draft documents last fall, the Codes were amended to improve the clarity of the language and the responsibilities of proponents, provide consistency with other regulations, reword some consultation requirements, and add a list of government agencies and their mandates.</p>	<p>Drafts posted on Registry Oct. 31, 2006. Final versions posted June 20, 2007.</p>
<p>Amendments to the Refrigerants Regulation (O. Reg 189/94), under the <i>Environmental Protection Act</i></p>	<p><b>Ontario is finally phasing out the use of CFCs in large commercial refrigeration equipment and chillers over the next 5 years.</b> It begins Jan. 1, 2009, with a ban on refilling IC&amp;I refrigeration equipment with a total capacity of more than 22 kW or equipment that has undergone a major overhaul, and a ban on the use of such equipment beginning January 1, 2012. On July 1, 2012, any surplus CFC will be designated as a hazardous waste. The proposed amendments were posted for comment first in 2003 and again in the summer of 2006. Changes have been made to several definitions, the filing of refill notices, the submission of chiller replacement plans, stewardship (including a "no-cost" seller take-back obligation, which takes effect Jan. 1, 2009), and enforcement provisions.</p>	<p>O. Reg. 189/94 was amended May 4, 2007.</p> <p>The phase-out begins Jan. 1, 2009, and runs through July 1, 2012.</p>
<p>Ontario's Integrated Power System Plan and associated "green energy" initiatives</p>	<p><b>Ontario opts for new and refurbished nuclear plants, promotes renewables and conservation, and reasserts need to close coal-fired plants sometime in the future.</b> On June 13, 2007, the Minister of Energy issued a directive to the Ontario Power Authority (OPA) to create an Integrated Power System Plan to meet the following goals:</p> <ul style="list-style-type: none"> <li>• Plan for nuclear capacity to meet base-load electricity requirements (by refurbishing units at Pickering and Darlington, and constructing new units at an existing facility);</li> <li>• Replace coal-fired generation with "cleaner sources in the earliest practical time frame that ensures adequate generating capacity and electricity system reliability in Ontario";</li> <li>• Through conservation measures, reduce projected peak demand by 1,300 MW in 2007, by 1,350 MW by 2010, and by an additional 3,600 MW by 2025;</li> <li>• Increase use of renewable energy by 2,700 MW (from the 2003 base) by 2010 and to 15,700 MW by 2025;</li> <li>• Use natural gas at peak times and "pursue applications that allow high efficiency and high value use of the fuel"; and</li> <li>• Strengthen the transmission system.</li> </ul> <p>Other initiatives announced to-date include: developing new performance standards for lamps and banning incandescent light bulbs by 2012; funding small renewable electricity generating projects through the province's Standard Offer Program; and switching to deep-water cooling for Queen's Park and eco-friendly energy sources for MOE's head office.</p>	<p>On-going, with milestones set in 2007, 2010 and 2025.</p>
<p>Implementation of Bill 51, <i>Planning and Conservation Land Statute Law Amendment Act, 2006</i></p>	<p><b>The matters dealing with planning reform came into force on January 1, 2007, and the balance of the Bill came into effect on Royal Assent.</b> O. Reg. 548/06, which came into effect on January 1, 2007, prescribes the transition provisions for planning applications at the time of proclamation of the Act. Those that commenced before January 1, 2007, are to be continued and disposed of under the Act as it read on December 31, 2006.</p>	<p>Received Royal Assent Oct. 19, 2006.</p>
<p>Canadian Council of Ministers of the Environment (CCME) Standard for PHC and Soil Quality Guidelines for Selenium and PAHs</p>	<p><b>New standards for PHC, PAHs and selenium are in the works.</b> In April, CCME published the draft <i>Canada-wide Standard for Petroleum Hydrocarbons (PHC) in Soil</i>, together with the technical supplement, scientific rationale and user guidance document. CCME has also published two draft scientific supporting documents for a Canadian Soil Quality Guidelines, one for Selenium and a second for Carcinogenic and Other Polycyclic Aromatic Hydrocarbons (PAHs).</p>	<p>The deadline for comments closed in June, and the reports are no longer on the CCME website.</p>

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