

To the Editor:

This is an article from a series of monthly columns by Environmental Law Specialist Dianne Saxe, one of the top 25 environmental lawyers in the world, and Ms. Jackie Campbell. These articles are available for publishing at no charge, provided Dr. Saxe and Ms. Campbell are cited as the authors. Dr. Saxe can be contacted at (416) 962-5882 or admin@envirolaw.com. For more information, visit <http://envirolaw.com>.



News Article

50 years of environmental law in Canada

2011 is the 50th anniversary of Ontario (and I think Canadian) environmental laws. Our first environmental statute came in 1961: *Ontario Water Resources Act*.¹ It was intended to stop municipal and industrial sewage from being dumped, untreated, into our lakes and rivers. Yes, we really did that, only 50 years ago.

Here is a potted history of the environmental law milestones that I remember:

1960s: Rachel Carson publishes *Silent Spring*, her explosive book on how the pesticide, DDT, is killing the world's birds, and may cause cancer in people. (She doesn't mention her own cancer.) Pesticide regulation begins. OWRC starts to build sewage plants around the province. Heavy industry is blocked from dumping liquid waste into rivers and lakes; they start dumping it into old gravel pits and quarries instead. (This turns out to have been a really bad idea.) The US starts regulating solid waste.

1970s: First International Conference on the Human Environment. Ministries of the Environment are created in many jurisdictions, including Canada and Ontario. Ontario adopts air and waste disposal permit systems in the new *Waste Management Act*, then the

¹, following creation of the Ontario Water Resources Commission (OWRC) in 1956

Environmental Protection Act (EPA). First enforcement efforts. DDT is banned. The Spills Bill is adopted but not proclaimed. The federal *Fisheries Act* is broadened. Environmental assessment begins. Recycling starts. Oil prices skyrocket. Energy conservation is briefly popular. Emission controls start for new cars. Legislation begins to control toxics, eg the federal *Environmental Contaminants Act*. Love Canal; Minimata disease at Grassy Narrows; Mississauga train derailment.

1980s: US adopts Superfund (CERCLA). Prodded by the NDP, Peterson Liberals get serious about environmental enforcement, with strong public support. Fine maximums increase dramatically. The Ministry of the Environment creates an Investigation and Enforcement Branch. Lawyers and scientists begin to specialize in environmental enforcement and aggressively use prosecution and administrative orders. Even Environment Canada hires some enforcement staff. Environmental lawyers and consultants flourish.

Ontario extends environmental liability to corporate officers and directors, and to lenders, and adds whistleblower protection. The famous *Bata* case begins, in which the manager, president and chairman of the board of a major company were first prosecuted personally for unintentional pollution.²

The Spills Bill and the *Canadian Environmental Protection Act* come into effect. Standards are set for contaminated sites. Cleanup costs take priority over secured lenders, to their shock. Mines are required to prepare closure plans. Waste disposal options contract and costs skyrocket. Long hearings struggle to set new rules for forest management; landfill siting, and hazardous waste disposal. An attempt to establish a public facility to destroy hazardous waste fails. Landfill space becomes critically short. PCBs and some other chemicals are banned. Carcinogens found in Sydney Tar Ponds. Drive Clean begins to enforce emission controls for existing cars.

1990s: Hagersville tire fire. The NDP adopt the *Environmental Bill of Rights, 1993*, and set up the Ontario Environmental Commissioner. Federal environmental assessment gains unexpected teeth from the Oldman dam decision, and is formalized into the *Canadian Environmental Assessment Act*. Contamination of soil and groundwater becomes a major concern to lenders and purchasers. The waste management business consolidates.

Government deficits soar out of control. Ontario's NDP government is followed by Mike Harris Tories, and their "Common Sense Revolution". They prefer alternatives to traditional "command and control" regulations, such as self-regulation, economic instruments, third party assessment. The MOE suffers huge staff and budget cuts; the Tories openly plan to eliminate most of the ministry. Environmental assessment is scoped (narrowed). Programs such as water testing, tree planting, and monitoring are slashed. Province off-loads more environmental responsibilities onto municipalities. Plastimet fire.

Ontario's environmental enforcement slows, but the federal role is expanded by the *Canadian Environmental Protection Act, 1999*.

2000s: Walkerton water crisis: 7 die, 2000 fall ill. With considerable justification, the

² All but the chairman of the board were ultimately convicted and fined

province is blamed. Environmental enforcement rockets back up in popularity. The MOE regains money, staff and influence. More authority is given to front line provincial officers (Provincial Officer Orders, or POOs).

Province promises to adopt all recommendations of the Walkerton Inquiry. Flurry of new laws focus on drinking water: *Safe Drinking Water Act*; *Nutrient Management Act*; *Clean Water Act*. More municipalities outsource water/ wastewater management. Amalgamations force towns and cities to subsidize water/ wastewater upgrades in rural areas, especially poorly run communal systems.

The McGuinty Liberals launch a blizzard of environmental initiatives. Administrative monetary penalties for spills. Much tighter air emission rules. Contaminated site rules go into law, become mandatory in some cases. Land application of untreated hazardous waste and septage are banned. The *Waste Diversion Act*. Public acceptance of human responsibility for climate change. Some efforts to reduce greenhouse gases; limited efforts to adapt. Energy conservation is added to the *Building Code*. The *Green Energy and Green Economy Act*.

Substantial private environmental litigation, mostly on contaminated sites. Urban air quality improves.

2010/2011: *Toxic Substances Control Act*. *Water Conservation and Opportunities Act*. Contaminated site rules become much stricter on July 1, 2011. Waste diversion suffers setback from unpopular “Eco fees”. Delay seems likely on the Western Climate Initiative.

It’s been a very busy 50 years, and I am proud of our progress: so much has been done by so many on so many fronts. But I am also concerned and ashamed. Concerned because none of our progress can be taken for granted; our own provincial government planned to get rid of the Ministry of the Environment, and might well have done so if not for Walkerton. And ashamed because our halting progress has been focussed on the easy problems; we are dumping the hard problems, such as climate change and nuclear waste, on our children. We have nothing to be smug about.