

THE EBB AND FLOW OF ENVIRONMENTAL ENFORCEMENT IN ONTARIO

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May 2001

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1. Executive Summary

The purpose of this paper is to evaluate the historical level of enforcement for the protection of drinking water in Ontario. Although prosecutions serve as an important deterrent for protecting human health, better enforcement of standards protecting drinking water is not the only solution to Ontario's current water quality problems.

For the purposes of this paper, level of enforcement is defined in two ways. First, the number of investigations, prosecutions and convictions, and the financial amount of fines collected, are used as indicators of enforcement effort. Second, the number of investigators, and budgets for enforcement activities, are included as an approximate measure of enforcement capacity. Combined, these two indicators create an overview of enforcement.

Generally, the level of enforcement of environmental laws in Ontario has followed an unclear path. The number of prosecutions and convictions rose steadily from 1985 to 1992. In 1992, prosecutors laid 2,269 charges, obtained 266 convictions and collected \$3,633,000 in fines. After 1992 however, all indicators of enforcement effort declined precipitously, reaching a low in 1996 when the number of convictions went down to 121 and fines dropped to \$1,204,000.

Eventually, the number of prosecutions and convictions has increased again, but not the amount of fines levied or collected. Although the courts have failed to impose large fines, there is some evidence suggesting the Ministry of Environment (MOE) has not sought them. Overall, enforcement effort has varied widely over the course of the last ten years. The rationale for this fluctuation is not discussed in the province's Compliance Guideline and appears to be the sole result of budgetary and political decisions.

In conducting our study, we could not determine the level of enforcement afforded to drinking water protection. A number of agencies and branches were contacted and the Freedom of Information process was used to obtain enforcement data. It appears from these inquiries that the Ministry of the Environment does not compile records of environmental offences related directly to drinking water.

Despite this limitation, it is possible to conclude that the protection of drinking water is dependent upon enforcement capacity. A marked decrease in enforcement budgets mirrors the decline in prosecutions and convictions. All areas of enforcement capacity have declined (e.g. funding for inspections, investigations, prosecutions and lab tests). The fluctuation of the budget for enforcement and compliance (a 27% decrease from 1992/93 to 1997/98 and then a 34% increase from 1997/98 to 2000/01) is most likely responsible for the reduction in the level of enforcement. Cuts to abatement staff, those responsible for compiling occurrence reports, the bread and butter of prosecutions, have been cited as the most destructive. At present the MOE has the capacity to carry out only 1,200 investigations and about 350 prosecutions out of the 6,000 suspected violations.

The Ontario Drinking Water Objectives are voluntary and because of this municipalities and the Ontario Clean Water Agency can not be prosecuted for sewage systems discharges or for not meeting the requirements of the objectives.

Overall, the recovery of the MOE enforcement program is dependent upon better coordination between the abatement staff and IEB, hiring of experienced counsel, more strategic targeting of compliance inspection and enforcement activities, and of course, more resources.

The appointment of the enforcement SWAT team dedicated to the investigation and prosecution of environmental offences is a step in the right direction. However it is too early to comment on its success.

2. Introduction

2.1 History

The modern era of environmental regulation in Ontario began primarily as a response to a successful riparian landowners' lawsuit against the Kalamazoo Vegetable Parchment Co. Ltd. [*KVP Company v. McKie*, [1949] SCR 698, at 700-1]. One of the landowners downstream from the pulp and paper mill, near Espanola Ontario, succeeded in obtaining an injunction to stop the discharge of pollution from the mill into the Spanish River. A special statute [*An Act respecting the KVP Company Limited*] was subsequently created, granting the mill permission to pollute, but not limiting the right to damages.

Several years later, two successful common law actions by riparian landowners downstream from municipally operated sewage treatment plants [*Stevens v. Richmond Hill*, (1955) 4 DLR 572; and *Burgess v. Woodstock*, (1955), 4 DLR 615] pressed the Government of Premier Leslie Frost to create the *Water Resources Commission Act*. The Commission was sanctioned to allow pollution to be discharged into waterways, thereby creating the defense of statutory authority. To protect water quality in Ontario, the Commission could also attach conditions or limits upon these discharges as a condition of approval for the polluting facilities.

The first Ontario drinking water quality objectives were set by the Commission in the late 1960s. The objectives allowed the Commission to impose limits for certain contaminants and provided a measure for assessing the suitability of technical designs. The objectives further led to the issuance of Certificates of Approval, which are still used today by Ontario Ministry of the Environment (MOE) to permit allowable pollution. By 1971, there were 497 industries permitted to discharge wastes directly into Ontario waters. [D. MacDonald, 1991]. Generally, the Commission conducted a policy of negotiated abatement and almost never enforced its limits. During the period 1965-1971, 95 charges were laid, 73 convictions were obtained, and fines totaling \$27,405 were imposed by the courts (average fine \$375.41) [D. MacDonald, 1991].

The Ministry of the Environment was created on April 1, 1972, which amalgamated the Ontario Water Resources Commission with the former Department of the Environment. The MOE had several main branches: water resources and pollution control; air and land pollution, and laboratory and research division. An abatement group was created for the protection of air, land and water. Officers were responsible for all phases of the compliance process, including negotiation of abatement agreements and the decision to prosecute. Staff members were primarily non-technical and did not have investigative experience. Consequently, few prosecutions were launched, and those initiated were largely in response to public complaints. In all, 69 convictions for environmental offences were recorded from 1972-1980. It is generally accepted that during the first decade of the MOE's operation, the setting of standards and efforts made to enforce compliance were inadequate [D.P. Emond, 1985].

The accommodative policy of enforcement gave way to a prosecutorial emphasis, beginning in approximately 1985. At this time, the MOE established Canada's first Investigations and Enforcement Branch dedicated exclusively to investigating and preparing environmental enforcement actions. By 1988-1989, the Branch had secured 164 convictions.

2.2 Purpose

The purpose of this study is to provide the Walkerton Inquiry with a review of Ontario's effort to enforce laws protecting drinking water. The number of investigations sought and undertaken, prosecutions undertaken, the number of convictions obtained, and the amount of fines imposed will be canvassed as a means of measuring this effort.

Similarly, establishing the budgets for enforcement activities and policies and acts used to carry out prosecutions are an important purpose of this paper.

2.3 Methodology

This study relies on a wide range of sources for information, including primary information and academic literature pertaining to historical enforcement and compliance. Most of the data on enforcement was obtained from the Canadian Environmental Law Reports [C.E.L.R, Vol. 1-24], the MOE annual reports titled Offences Against the Environment [MOE, 1992,1993, 1994]¹ and the Provincial Budget Estimates from 1985/86 to 2000/01.

Government officials from the following Branches of the MOE were contacted:

- the Investigations and Enforcement Branch (IEB);
- the Legal Services Branch of the MOE (seconded from the Ministry of the Attorney General);
- the Environmental Monitoring and Reporting Branch;
- the Inspection Support Services;
- all the regional MOE branches; and
- the MOE information center.

Representatives from the Sewer and Water Inspection Program were also consulted. Requests for information were made under the *Freedom of Information Act*, emails and telephone calls. Government archives and websites also helped to provide the information for this report.

In conducting this study, we have examined cases in Ontario where parties convicted of offences could be construed as having affected surface or groundwater and their sources. Acts that were considered for this report include the *Ontario Water Resources Act*, the *Pesticides Act*, and the *Environmental Protection Act*. The data has been compiled

¹ The MOE discontinued publishing these reports after 1995.

through researching volumes of the Canadian Environmental Law Reports and the MOE Offences Against the Environment Reports.

MOE staff were asked standardized questions regarding the historical numbers of complaints, inspectors/investigators, inspections/investigations, formal warnings, orders, prosecutions, charges laid, convictions and amount of fines (see Appendix 1). The MOE's funding or budget information allocated for environmental enforcement/compliance was also sought. Most of this information specific to drinking water is not publicly available or could not be located from amongst the 200,000 documents supplied to the Walkerton inquiry.

To address this gap in data, we also relied on the research conducted by a number of environmental non-governmental organizations, for example, the Canadian Institute for Environmental Law and Policy, the Sierra Legal Defence Fund and the Canadian Environmental Law Association. With respect to information that was not reliable or available, experts in the field of environmental enforcement and policy were contacted for comment, including Linda McCaffery, Lang Michiner; Dianne Saxe, Barrister & Solicitor; Rodney Northey, Birchall Northey; David McRoberts, Senior Counsel, Environmental Commissioners Office, and Peter Dennis, Peter Dennis Environmental Consulting.

2.4 Limitations

Many of the documents or information listed in this paper were not easily accessible. Initially, a number of agencies/branches of the MOE were either uncooperative or unable to respond to our requests. It appears that the MOE has never comprehensively compiled information regarding enforcement efforts related to drinking water.

Most of the MOE branches advised us that the accommodation of our requests would have to take place via *Freedom of Information* (FOI) requests. We have not received a reply to our most recent request to the Ministry of the Environment (See Appendix 2) as of May 2001.

Prior to the adoption of the *Drinking Water Protection Regulation* on August 8, 2000, protection of Ontario's drinking water was governed by the *Ontario Drinking Water Objectives*, which were voluntary and were seldom used to order compliance. No charges could be brought for violating the Objectives.

Faced with limited printed information or data, we approached different MOE departments. However, they were not able to furnish us with the information in question and constantly referred us to other departments and agencies. As a result, the data presented in this study may not provide a definitive quantification of the MOE's efforts to prosecute offences relating to drinking water quality.

The second half of this study investigates the fluctuating level of the MOE's enforcement budget and capacity (e.g. funding for inspections, investigations, prosecutions, lab tests,

etc.) related both to drinking water and to the overall MOE budget. Gathering information on environmental statistics has been a very difficult and arduous process. This leads us to believe that the MOE has not published detailed, comprehensive financial statements for spending by different regional offices but rather for the Ministry as a whole.

3. Enforcement Effort

Enforcement is a small but important part of the province's environmental protection regime that includes warnings, program approvals, and voluntary and mandatory abatement. The province's own Compliance Guideline states:

"Enforcement which is prompt and certain serves as a general deterrent to others who might be tempted to contravene the environmental laws and regulations."
[Compliance Guideline, Guideline F-2, last revision November, 1997]

Enforcement generally entails an investigation by staff of the Ministry of Environment's Investigations and Enforcement Branch to determine whether reasonable and probable grounds exist for laying charges for violation of legislative and regulatory requirements of the Ministry.

Enforcement effort includes carrying out regular inspections, pursuing investigations in response to complaints or inspections, preparing occurrence reports and briefs, prosecuting, and obtaining fines and convictions.

The MOE does not keep separate enforcement statistics related to drinking water prosecutions. The CEDF has attempted to compile a picture of MOE enforcement efforts related to water quality for the last 10 years by reviewing the number of charges, prosecutions and convictions brought under the OWRA, the EPA and the *Pesticides Act* from the C.E.L.R reports and the *Offences Against the Environment Reports*.

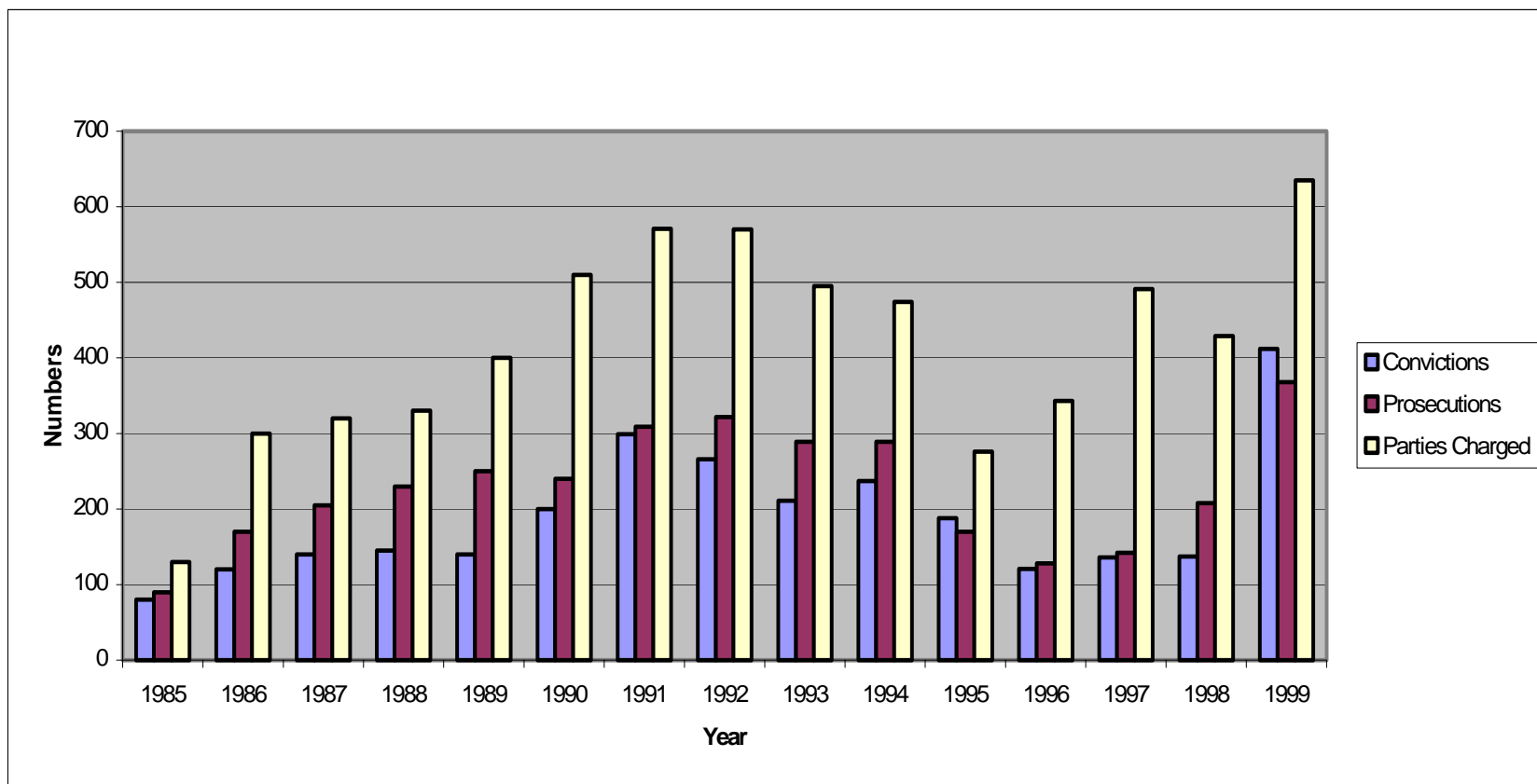
The summaries of the C.E.L.R.'s have been consulted to determine whether a given case can be linked to water quality impairment. The number of charges, convictions and fines were also noted. This report, however, does not comprise a complete review since not all cases are listed in the C.E.L.R. (See Appendix 1). Cases of dumping, spills and leakage into any body of water comprise the statistics considered by this study.

In 1992, the Ontario Ministry of the Environment Enforcement and Investigations Branch laid a record 2,269 charges for pollution offences of all sorts. Prosecutors obtained 255 convictions, resulting in judgments against corporations and individuals in the amount of \$3,633,000 [MOE, 1992]. The average fine per conviction was \$14,200. It is impossible to determine how many of these convictions related directly to drinking water, however a review of the C.E.L.R makes it possible to conclude that a large number of these convictions were related to water contamination cases.

Until 1993, Ontario charged and convicted a significantly higher number of companies and individuals than any other jurisdiction in Canada. For example, convictions obtained in Ontario have been estimated to have been at least 35 times the number obtained by the federal government [Canadian Environmental Law Association, February 3, 1998]. Graph 3.1 on enforcement summary shows that the total number of charges, prosecutions and convictions has fluctuated dramatically. By 1999, the number of prosecutions had been restored to their previous numbers.

There is no stated policy available to explain this fluctuation. However, it is widely believed that after 1993 the MOE adopted a less aggressive prosecutions policy. This drop can be attributed in part to an internal MOE report from about 1992 that estimated the cost of prosecuting an environmental violation could be \$40,000 to \$50,000. Courts would often impose token fines of \$500, and the average of all fines per conviction was less than \$5,000. Although the number of cases has rebounded, a general sentiment prevails that with the loss of most its experienced counsel in the past five years, the MOE Legal Services Branch may not be able to adequately prosecute significant cases.

Graph 3.1: Enforcement Summary



Source: Numbers for 1985-1990 from Offences Against the Environment, 1994

Numbers for 1991-1999 from Annual Enforcement Summary, MOE IEB Head Office (Appendix 3)

* The reversal between the number of convictions and the number of prosecutions for the years 1995 and 1999 may result from cases that were carried over from the previous year and/or prosecutions that result in multiple convictions.

In Ontario, total environmental fines for polluters dropped by more than 70% between 1992 and late 1997 [Canadian Environmental Law Association, February 3, 1998]. The MOE states that on the whole, environmental fines imposed during the first 11 months of 2000 were 74% higher than fines in 1999 (Graph 3.2). However, the Ministry's report is not annotated [<http://www.envirolaw.com>]. More than half of the year 2000 fines total came from two undefended trials of foreign defendants, Aqua-Tech Blue and Perilli, who are unlikely to ever pay anything (*ibid.*). The remaining total for the year 2000 would therefore be approximately \$1,250,790 compared to \$1,500,000 for 1999.

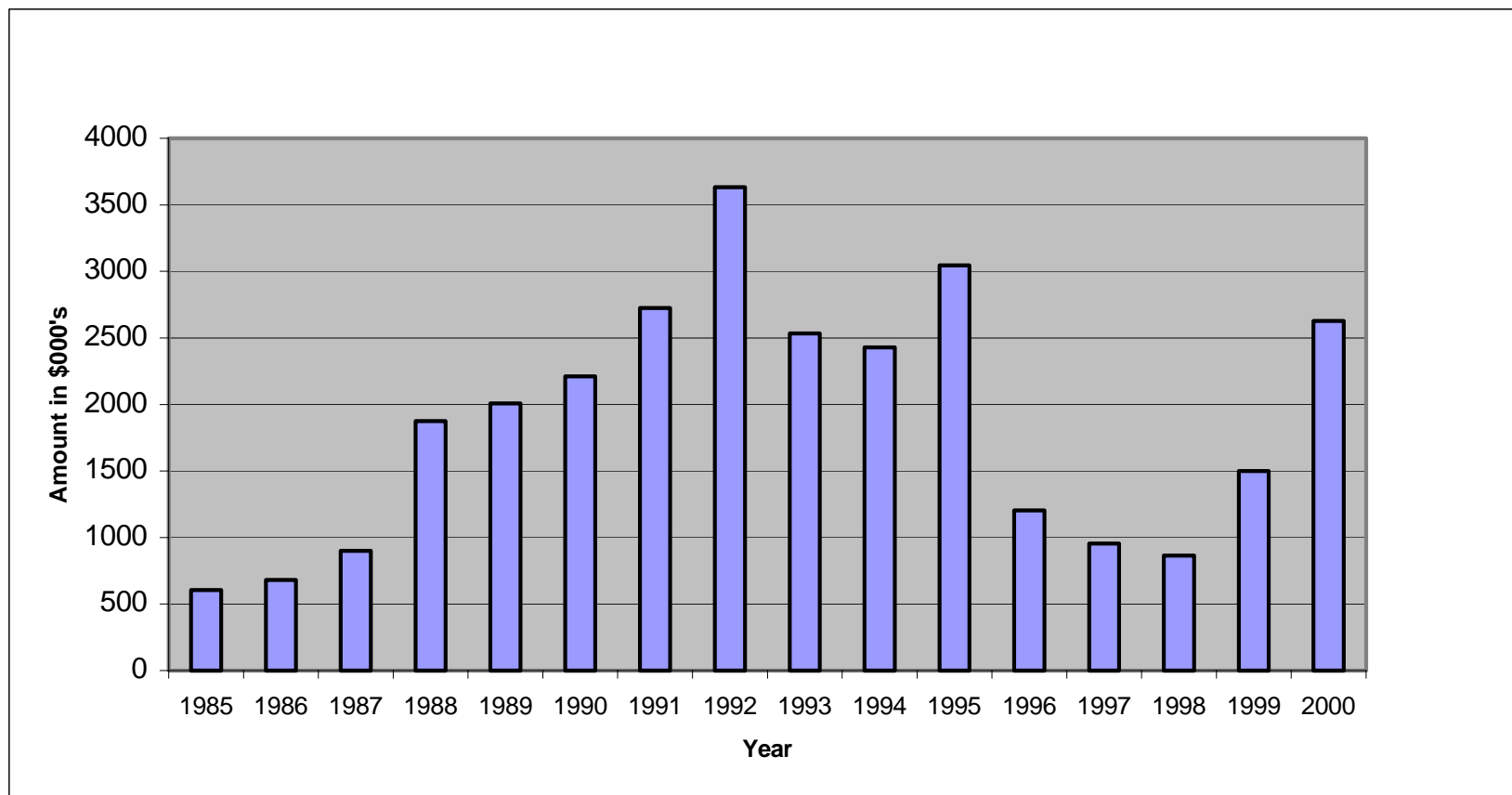
Graph 3.2 indicates that after 1995 the amount of fines levied declined considerably. Since fines act as a deterrent, those collected as a result of convictions provide a positive indication of effective enforcement efforts.

The collection of fines is an important component of deterrence. Even during the years the MOE published its enforcement reports, the amount of fines collected was never reported, only the amounts levied. At present, the MOE relies on the Attorney General to collect fines levied for environmental offences. In 1998, the Minister of the Environment at the time complained that convicted polluters had "gotten away" with \$10 million in unpaid fines. By March 31, 2000 the Special Report of the Auditor General, "Accountability and Value for Money" reported over \$10 million in unpaid fines still outstanding, prompting the observation, "The significant amount of unpaid fines compromises the extent to which enforcement measures act as an effective deterrent." [Office of the Provincial Auditor of Ontario, 2000: 125].

Despite promises to crack down on violators with unpaid fines, it could not be determined if certificates of conviction are routinely ordered from the court or if Certificates of Approvals are not renewed for non-payment of fines.

It is impossible to quantify what level of enforcement effort, as measured by numbers of prosecutions, convictions, fines, etc. is sufficient. Until an objective standard for measuring successes in enforcement efforts can be devised, anecdotal evidence will continue to dominate the calculation of enforcement effort. There does seem to be general agreement that the Provincial Auditor's conclusion that more stringent enforcement is required is justified.

Graph 3.2: Amount of fines levied



Source: Years 1985-1994: Offences Against the Environment, 1994

Years 1994-1998: Numbers for 1991-1999 from Annual Enforcement Summary, MOE IEB Head Office (Appendix 3)

Years 1999-2000: <http://www.envirolaw.com>

*Over half of the 2000 fines came from two undefended trials of foreign defendants who are unlikely to pay.

The remaining total for 2000 would therefore be approximately \$1,250,790.

3.1 Number of Complaints

The MOE has not compiled a profile of drinking water compliance, including prosecutions and number of complaints lodged with the Ministry regarding drinking water problems. None of the officials contacted at the Abatement Branch, the Legal Services Branch or the Enforcement and Investigations Branch could provide this data.

3.2 Inspections, Tests and Public Notification

Monitoring compliance and regular inspections of existing Certificates of Approvals is a primary part of enforcement. Since 1996, ministry-initiated inspections have decreased by 34%. Each year, over 20,000 pollution occurrences are reported to the MOE. During 1999/2000, the MOE conducted 4,400 inspections 31% of which were significant violations. [Office of the Provincial Auditor of Ontario, 2000].

Before the *Drinking Water Protection Regulation* (DWPR), the Ontario Drinking Water Objectives (ODWO) provided a standard guideline for maintaining water quality. The ODWO were adapted from the national *Canadian Drinking Water Guidelines* (with the exception of three health-related guidelines unique to Ontario). Drinking water treatment plants supplying more than 50,000 liters of water/day or serving more than 5 residents qualify for inspection and monitoring under the ODWO. These guidelines were followed voluntarily and applied at the discretion of the water system operators.

In 1993-94, 75% of municipal water treatment plants in Ontario were inspected compared to just 29% in 1999-2000 [The Toronto Star, December 22, 2001]. From our interviews with MOE officials, we found that for two -three years prior to the Walkerton tragedy, inspection of water treatment plants were conducted approximately once every three to four years. Implementation of the recommendations was limited or non-existent, as were follow-up and monitoring efforts. All plants were inspected in the year 2000/2001 and MOE officials confirm that inspections will now be conducted on an annual basis.

Two programs are responsible for monitoring and supervising the operation of drinking water treatment plants and the quality of drinking water. Both of these programs pre-date Walkerton and are followed on a voluntary basis.

The Sewer and Water Inspection Program (SWIP), under the Operations Branch of the MOE, is responsible for pro-active and reactive inspection of water and sewage treatment plants, and ensuring that the water treatment plants meet the Ontario Drinking Water Objectives, now known as the *Drinking Water Protection Regulations*. The MOE publishes the inspection results once a year, known as the "Adverse Water Quality Incident Report." Compliance reports are posted on the MOE intra-net website. Each district manager is then responsible for reviewing these before they are finally posted on the public MOE website. As of June 2000, only health-related adverse water quality incidents involving E. coli, fecal Coliform or boil water advisory or orders have been reported [<http://www.ene.gov.on.ca/envision/adverse/adversewater.htm>].

The Drinking Water Surveillance Program (DWSP) established in 1986 is the most comprehensive surveillance program for providing information on municipal drinking water quality in Ontario. DWSP is not a compliance-monitoring program; rather it tracks long-term water quality trends. The DWSP:

- currently monitors about 149 drinking water treatment systems;
- maintains a comprehensive database on drinking water quality to report an alert when an ODWO is exceeded;
- provides definitions of contaminant levels and trends in support of setting standards and provides a background for remedial action; and
- assesses treatment efficiency of plant processes.

In case of mishap, the DWSP informs the operating authority/MOE district manager who is then responsible for alerting the local medical officer. In spite of recommendations made by the Provincial Auditor Mr. Erik Peters in 1994 [Office of Provincial Auditor General, 1994] the Ministry did not strengthen the Drinking Water Surveillance Program (DWSP).

Until 1995, water-sampling tests conducted by the MOE covered microbial parameters including *E. coli*. However, Drinking Water Surveillance Program documents confirm that at the beginning of 1996, the testing of microbial parameters was discontinued. This weakened water quality and trend monitoring efforts and also undermined public safety and health related issues.

In the same year, the provincial government downloaded the responsibility for municipal water testing to private laboratories. Prior to handing over the duty to private labs, municipal labs were required to alert local Ministry officers when problems were detected. Labs would in turn notify public health officials who could issue boil-water advisories. No such rule was in place for the private labs, which created a gap in the regulations in terms of alerting the public to unsafe drinking water. The new *Drinking Water Protection Regulation* require more frequent and mandatory testing and alerting practices.

In the past, Ontario governments have released an annual drinking water surveillance report. This was discontinued after 1995. A 1996 annual report by the Provincial Auditor revealed that the MOE is supposed to maintain a database of all wells in Ontario to help the province assess the quantity and quality of water [Office of Provincial Auditor General, 1996]. However, this MOE database contains data from only 30,000 wells out of the 200,000 new wells built in Ontario since 1984 [CIELAP, 1999].

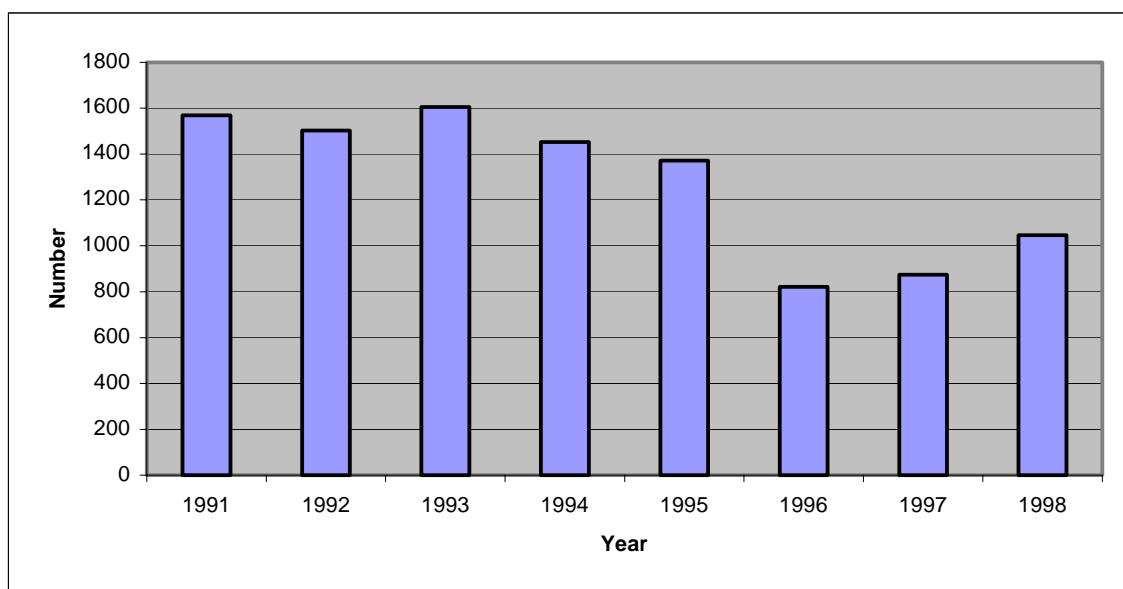
3.3 Investigations

Until very recently, prosecutions in Ontario were required to begin with an occurrence report, produced by Ministry staff. The MOE identifies non-compliance by conducting routine inspections, responding to spills, addressing public complaints, processing Environmental Bill of Rights requests for investigation (s. 74) and also through implementing its abatement programs.

Once a report has been prepared, it is forwarded to the Investigations and Enforcement Branch (IEB) of the MOE. An IEB supervisor must then determine whether an investigation is warranted. Investigations are undertaken by IEB officers to determine whether reasonable and probable grounds exist for laying charges. A written recommendation to prosecute is vetted and finally forwarded to the Legal Services Branch.

The MOE does not release information on the number of investigations it undertakes regarding possible contamination of drinking water. As a result, Graph 3.3, gives only the number of total investigations carried out for all environmental contraventions for the most recent years available.

Graph 3.3: Total Number of Investigations



Source: From Annual Enforcement Summary, MOE IEB Head Office (Appendix 3)

3.4 Alternative Penalties and Sentencing

In 2000, the Government of Ontario introduced *The Toughest Environmental Penalties Statute Law Amendment Act* – (further discussed in section 5.1.1 of this report). The *Act* will provide significant new powers for provincial enforcement officers, particularly in the area of administrative actions.

Administrative Monetary Penalties (AMPs) will enable abatement officers to issue tickets of up to \$10,000 for pollution offences. Administrative penalties reduce the time and expense of enforcement by allowing for summary convictions without a lengthy investigation and trial, but do not carry the stigma of a conviction.

Implementation regulations have not yet materialized and therefore are not being employed, despite the pronounced importance of the *Act*.

Sentencing innovations of the 1980s allowed defendants to do community work or donate to environmental causes instead of paying larger fines. Typically, fines vanished into the Consolidated Revenue Funds, while creative sentences helped fund site restoration, environmental education, and community projects, among other things. These punishments did not affect the company in terms of tax benefits or disadvantages, but could modify future behavior and were undoubtedly easier to collect [http://www.envirolaw.com/faxletter_fr.html].

In 2000, one defendant was offered such an arrangement but protested to the Premier of Ontario. This resulted in a moratorium being placed on the entire program in September 2000. However, when a reporter called the Premier's office and the MOE to inquire why this peculiar step had been taken, she was informed that there was no moratorium [http://www.envirolaw.com/faxletter_fr.html]. The Ministry of the Attorney General is, however, reviewing the array of options available. Pending that review, legal pundits believe that no creative sentencing will be permitted (*ibid.*).

3.5 Mandatory vs. Voluntary Abatement

Abatement refers to measures employed by the MOE to maintain compliance without resorting to enforcement. Abatement programs are used proactively to prevent reoccurrence of polluting events in lieu of prosecutions. It is believed that a large number of non-compliance events are managed by abatement measures and are never prosecuted. These measures focus on control, prevention, reduction and elimination of pollution. Historically, abatement has focussed on three instruments: voluntary abatement; mandatory abatement; and program approvals.

The MOE could not provide us with documentation relating to voluntary abatement programs, program approvals, control documents related to mandatory abatement approvals, director's orders, control orders, or formal warnings issued by the Ministry in response to drinking water quality offences. Guidelines allow abatement officers to use discretion to impose voluntary measures even in cases of significant or repeat violations and in cases where timely remediation had not occurred. Decisions to substitute voluntary compliance measures for enforcement were rarely documented [Office of the Provincial Auditor of Ontario, 2000: 120].

The MOE has responded that it has directed its field staff to pursue mandatory abatement actions more aggressively and is training investigators to proactively use new Administrative Monetary Penalties instead of abatement. Abatement officers should be given the same in-depth training formerly provided to District Managers, that included instruction at the Police College in the Rules of Evidence, writing Crown briefs, etc. This training ceased after the formation of the IEB.

3.6 Directors Orders

Both the EPA and OWRA permit Directors to issue orders, compelling operators of businesses or sewage works to stop polluting, or to improve abatement performance.

These orders are sometimes used as an alternative to prosecution as an abatement strategy. For years, these Orders were difficult to obtain and review. Now, the Environmental Bill of Rights lists many these instruments. The registry provides a brief description of the Order, the proponent and what is expected of them, and the number of comments the posting received along with electronic copies of the Orders themselves. Public consultations are also held to note public opinion of the matter. Additional notification may consist of sending a letter to the city in question, to the local MP, and the local MPP. The Ministry may decide not to issue an Order if the party agrees to take remedial actions or wins an appeal against the Order.

The EBR registry lists “Orders” issued under section 7 (Order for controlling contaminant discharge), s. 8 (Stop Orders), s. 17 (Order for remedial work) and s. 18 (Order for preventative measures) of the EPA. Most of these orders are Director's Orders to remediate contamination by leakage, spills or dumping of harmful chemicals. Orders may also be issued to cease the use of certain harmful chemicals, install instruments to mitigate or dilute the effects of the pollution. The Orders sometimes require the proponent to bring its' facility into compliance with the MISA regulation (Ontario Regulation 560/94 made under the Environmental Protection Act) concerning toxicity [<http://www.ert.gov.on.ca/pdfs/epa.pdf>].

For the OWRA, the Orders listed on the registry are for section s. 29 (Order for preventive measures), s. 31 (Order prohibiting or regulating discharge of sewage into water), s. 32 (Orders to alleviate effects through preventative measures) and s. 84 (Orders to pay for work done by the Ministry). Orders may require the proponent to make modifications to existing sewage works to meet limits established in Ontario Regulation 560/94, or to submit reports detailing the performance of the sewage works and containment systems [<http://www.ert.gov.on.ca/pdfs/owra.pdf>].

3.7 Enforcement across Canada

It is difficult, to establish the level of enforcement in other parts of Canada. No province specifically reports prosecutions or convictions related to drinking water.

Regarding enforcement generally, many provinces do not report the number of investigations, prosecutions or convictions in a given year. The following is the result of a review of Canada's provinces:

Table 3: Enforcement Effort Across Canada

Provinces	Convictions	Prosecutions	Charges	Fines	Years
British Columbia	16	60	229	11,199	2000
Alberta	7	n/a	n/a	212,075	1999/00
Saskatchewan	0	n/a	2	n/a	1999
Manitoba	175	n/a	187	57,048	1999/00
Ontario	228	208	429	1,500,000	1999
Quebec	113	n/a	n/a	241,700	2000
New Brunswick	19	23	27	35,233	2000
Nova Scotia	8	9	9	9,895	2000
Prince Edward Island	n/a	n/a	30	n/a	2000
North West Territories	0	0	n/a	n/a	2000
Nunavut	0	0	0	n/a	2000
Yukon	2	n/a	n/a	200	2000

Source: Data compiled through CEDF research. The responsible departments for all the provinces were contacted for the most recent data available.

3.8 Summary

The MOE does not systematically record or publish prosecutions or charges brought against drinking water quality impairment. This may be attributed to an insufficiency of administrative structure, will and/or resources. It is unlikely the public can be properly informed of enforcement efforts to protect drinking water without a dedicated legal structure or specific policy that contains explicit directions compelling the release of compliance information.

The general rise and fall of enforcement actions can be attributed to many factors. The erratic path of enforcement activity after 1993 cannot be traced to policy changes or technological advancements. It is widely accepted that the Investigations and Enforcement Branch and Legal Services Branch were discouraged from aggressively prosecuting over this period, but also were limited by significant budget cuts.

The number of convictions and prosecutions must be supported by the amount of fines levied and collected. While it is true that deterrence is derived partly from the public opprobrium arising from a conviction, it is also true that there are some defendants that are oblivious to community censure. A review of the amount of fines collected is necessary to establish whether these amounts are substantial enough to act as a deterrent. Once a fine is obtained, it must be collected to have any deterrence effect.

4. Enforcement Capacity

A second important component of enforcement and compliance is the maintenance of sufficient enforcement capacity. Monitoring compliance, conducting investigations, responding to complaints, and compiling prosecution briefs are highly technical and resource consuming exercises.

The reduction in enforcement effort may be directly related to the MOE budget and staff cuts. Historically, the legislative framework in Ontario has generated a large volume of

environmental prosecutions. Unfortunately, since 1995 the MOE budget has suffered severe cuts, and due to the lack of sufficient funding and staff, the Ministry has not been able to sustain a rigorous enforcement of legislation affecting drinking water in Ontario.

Enforcement activities necessary to generate a prosecution include:

- inspections to verify compliance;
- investigations of violations;
- measures to compel compliance without resorting to formal court action, such as directions by the Minister or enforcement officers, ticketing, and compliance orders by enforcement officers; and
- measures to compel compliance through court action, such as injunctions, prosecution, court orders upon conviction, and civil suits for recovery of costs.

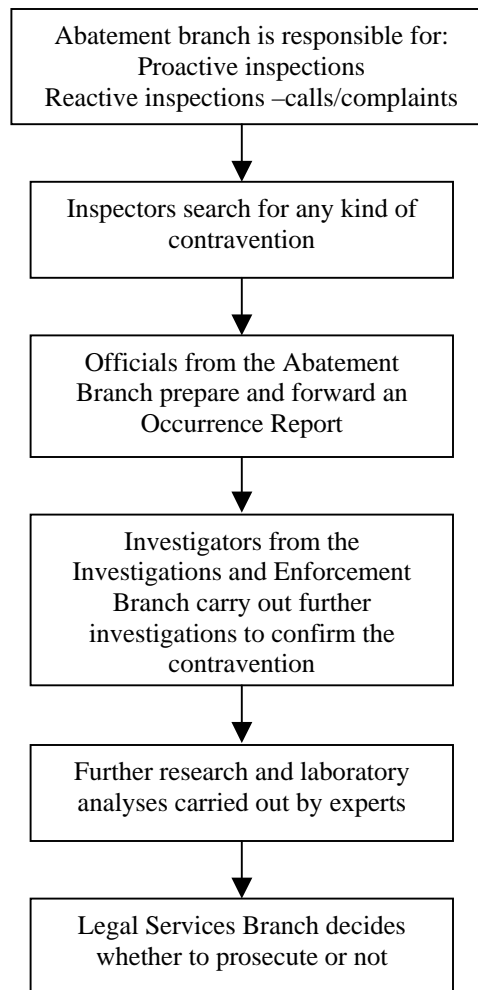
The enforcement process has a number of steps leading to a conviction or fine and different staff members of the Ministry follow through each step. Inspectors are required to monitor compliance with existing approvals, respond to complaints and compile occurrence reports.

Investigators are needed to respond to occurrence reports and to collect samples and have them analyzed to determine the types of pollutants that were released into the environment and in what quantity. Experts are required to supervise proper sampling, handling and preservation procedures. Trained scientists using specialized equipment perform analyses and reporting functions. Preparing analyses as evidence requires another level of expertise and experience.

The Abatement Branch of the MOE is responsible for inspections, which can either be proactive (government inspections conducted at regular intervals) or reactive (a response to a call or complaint). The inspectors then prepare an Occurrence Report for the Investigations and Enforcement Branch (IEB) alerting them to incidents of non-compliance. If prosecution is recommended, the IEB then prepares a written brief that is forwarded to the Legal Services Branch, which ultimately decides upon a course of action. The staff at the Legal Services Branch conducts trials and negotiates settlements.

The usual practice is that the Investigations Branch of the MOE cannot initiate an investigation unless the Abatement Branch forwards an occurrence report, requesting an investigation. While not common practice, IEB branch staff may come across something during a field visit and make a request for an occurrence report or advise an officer from the Abatement Branch to visit the site. This is not governed by any policy but rather is an internal procedure.

The sequence of events leading to a prosecution can be roughly described as follows:

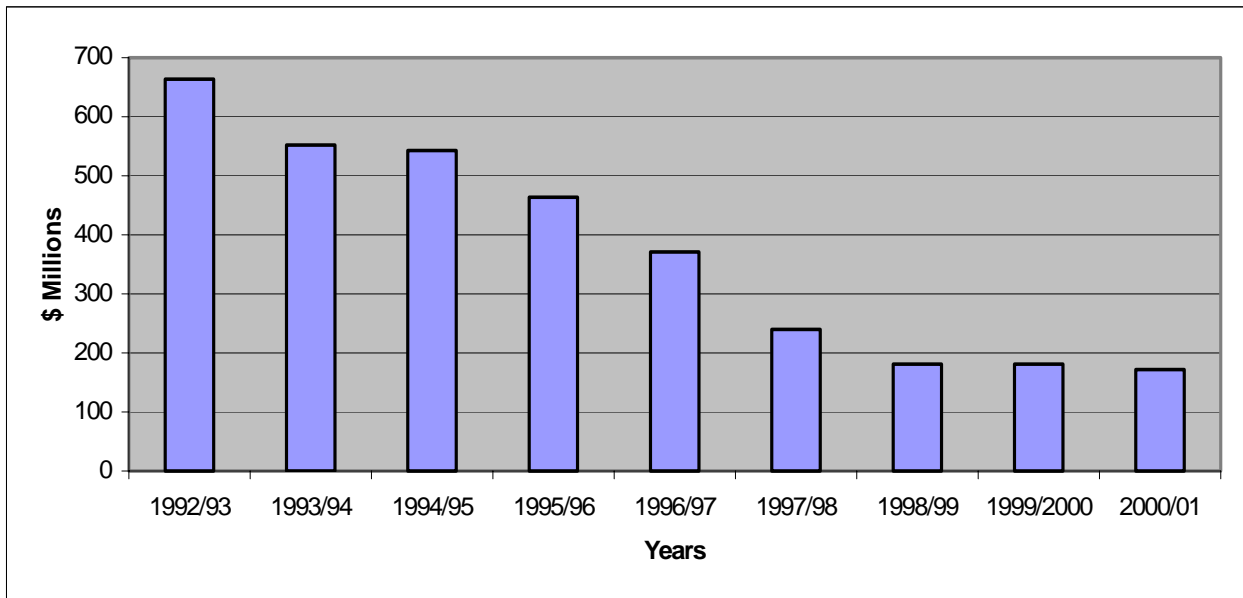


4.1 Overall MOE Budget

Table 4.1 and Graph 4.1 represent the overall MOE budget trend for the last nine years. There has been a 68% decrease in the MOE overall budget (operations and expenditures) from 1994/95 to 2000/01. The spending estimates for the fiscal year 2000-2001 show that the MOE spent \$7.3 million less on its environmental protection program in 2000 than it did the year before (based on Provincial Budget estimates).

Table 4.1: Overall MOE Budget

Overall MOE Budget (\$ Millions)									
	1992/93	1993/94	1994/95	1995/96	1996/97	1997/98	1998/99	1999/2000	2000/01
Operating	434	390	272	226	146	142	162	174	158
Capital	230	162	271	238	225	98	19	7	14
Total	664	552	543	464	371	240	181	181	172
% of decrease from previous year		16%	1%	14%	20%	35%	24%	24%	5%

Graph 4.1: Overall MOE Budget

Source: Annual MOE Budget Estimates 1992/93 to 2000/01

The following Graphs and Tables (4.2 to 4.4) reflect the trend of declining budget allowances for those branches or services of the MOE essential for carrying out enforcement activities.

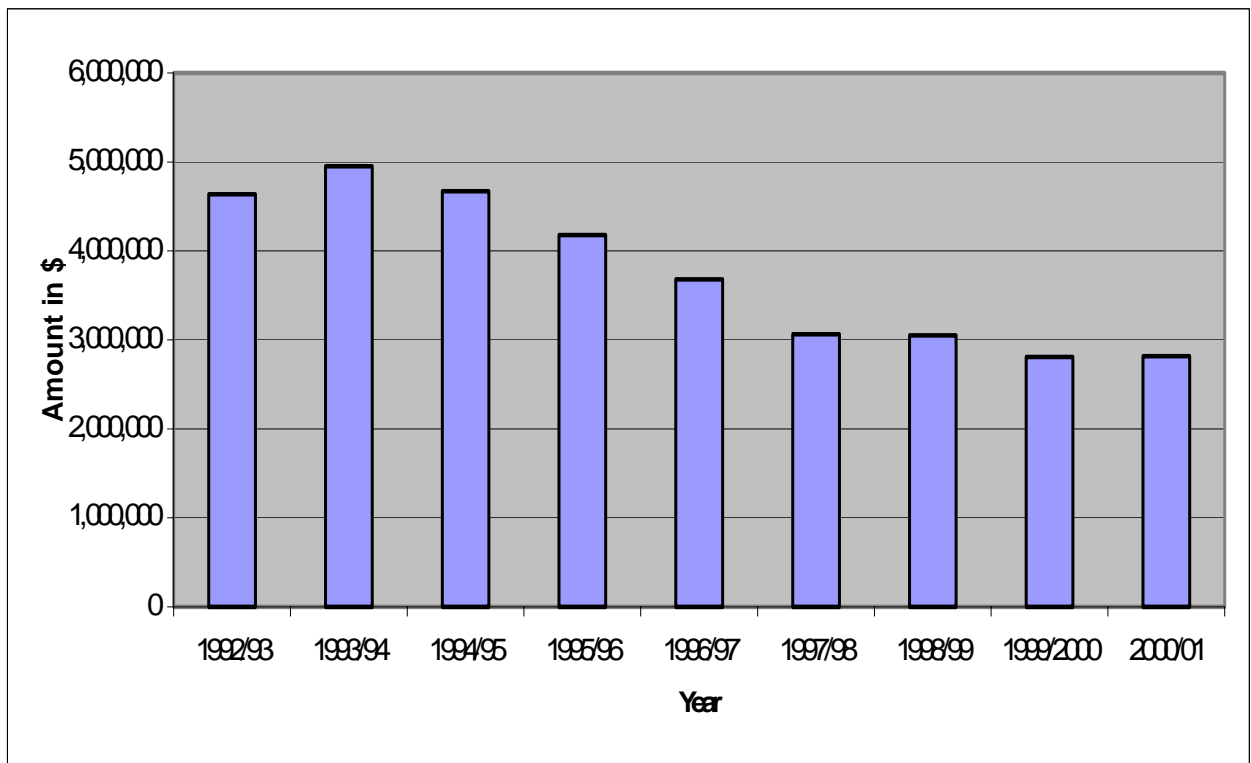
4.1.1 Legal Services Branch Budget

The annual budgets allocated for the Legal Services Branch are shown in Table 4.2 and Graph 4.2.

Table 4.2: Legal Services Branch Budget

Year	Amount \$
1992/93	4,636,900
1993/94	4,950,800
1994/95	4,670,600
1995/96	4,178,300
1996/97	3,681,800
1997/98	3,065,100
1998/99	3,051,100
1999/2000	2,808,800
2000/01	2,816,900

Graph 4.2: Legal Services Branch Budget



Source: Annual MOE Budget Estimates 1992/93 to 2000/01

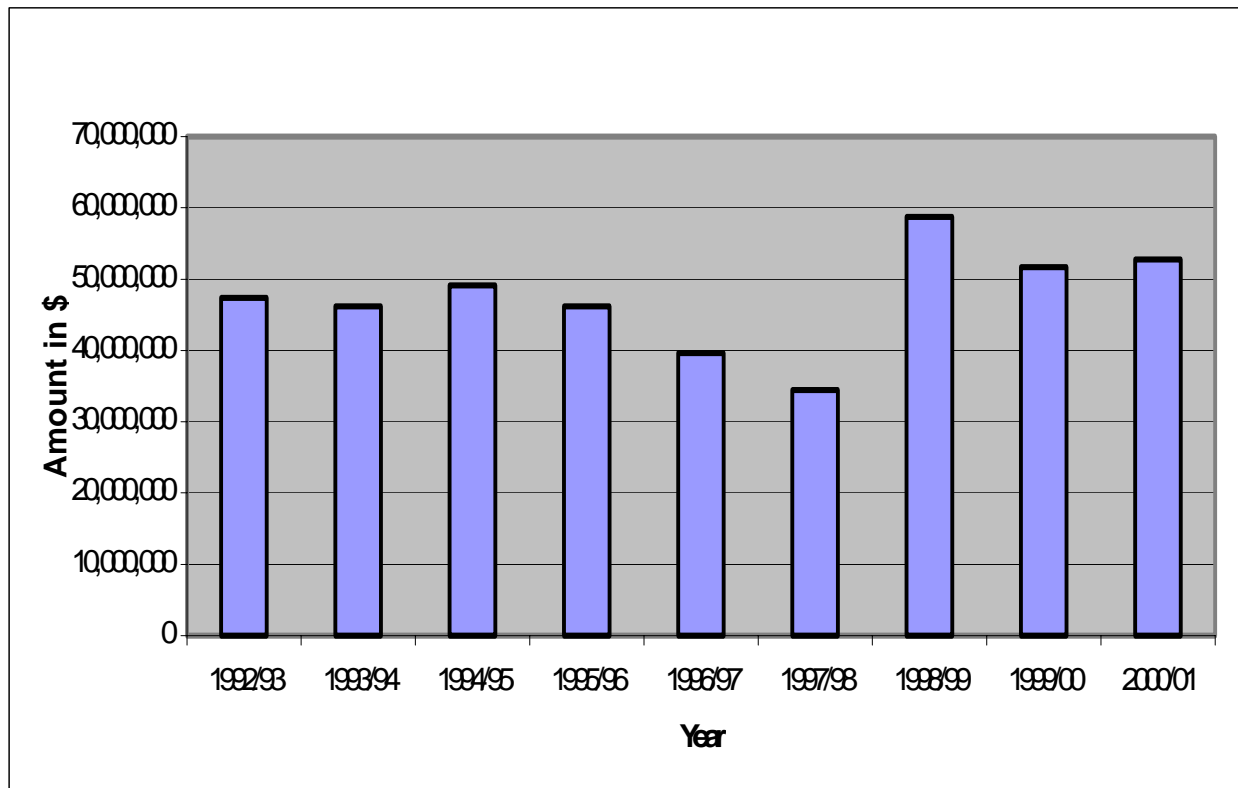
4.1.2 Enforcement and Compliance Budget

The annual budgets allocated for Enforcement and Compliance are shown in Table 4.3 and Graph 4.3. It is not clear what is included in the Enforcement and Compliance Budget. There is no indication of the branches supported under this.

Table 4.3: Enforcement and Compliance Budget

Year	Enforcement and compliance
1992/93	47,379,300
1993/94	46,166,700
1994/95	49,113,400
1995/96	46,174,700
1996/97	39,626,300
1997/98	34,433,400
1998/99	58,714,700
1999/00	51,706,500
2000/01	52,734,200

Graph 4.3: Enforcement and compliance budget



Source: Annual MOE Budget estimates 1992/93 to 2000/01

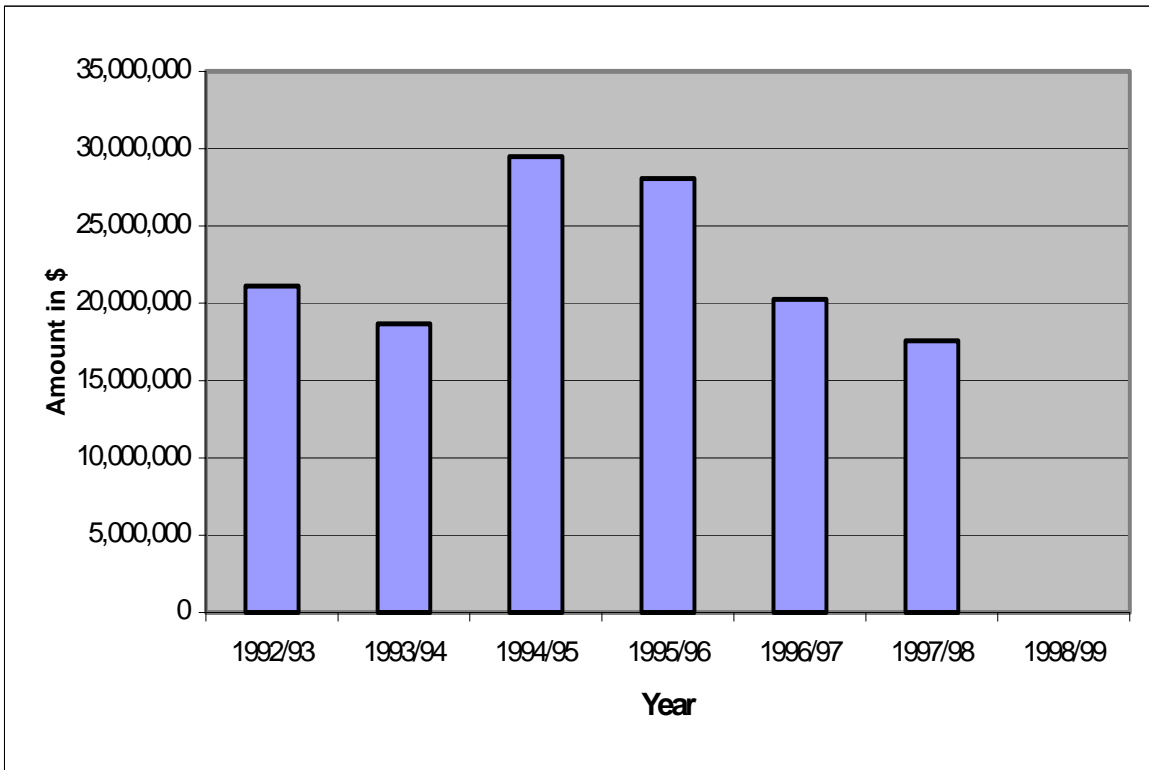
4.1.3 Laboratory Services and Research Budget

The annual budgets allocated for Laboratory Services and Research are shown in Table 4.4 and Graph 4.4. This category was discontinued in the budget as of fiscal year 1998/99.

Table 4.4: Laboratory Services and Research Budget

Year	Laboratory Services and Research Budget
1992/93	21,116,400
1993/94	18,673,900
1994/95	29,474,200
1995/96	28,069,100
1996/97	20,241,000
1997/98	17,568,300

Graph 4.4: Laboratory Services and Research Budget



Source: Annual MOE Budget estimates 1992/93 to 2000/01

4.2 Number of Staff

Funding cuts have inevitably led the MOE to cut staff². In 1995, the provincial government laid off more than 900 workers in the field of enforcement and inspection [The Toronto Star, Dec 22, 2000]. This figure represented about one third of the MOE staff at the time. Since then the overall MOE staff has been cut from 2,208 in 1995, to 1,494 in the year 2000.

All MOE branches have been subject to cuts. The Operations Division of the MOE responsible for administering the Ministry's approvals and enforcement activities has seen a staff reduction by over 25% since 1994 [<http://www.gov.on.ca/opa/english/r00t.htm>]. In 1995, investigation and enforcement staff numbered 97, whereas in 1999 that number was 87. Despite the need to reinforce inspections, the Ontario Government rejected the idea of hiring more inspectors [CIELAP, 2000].

Effectively, the cuts have deprived abatement staff to perform planned inspections that usually included many of the Region's largest emitters. Cuts to staff, travel and sampling budgets limit staff to respond to complaints, which are not always high priority occurrences. These figures underscore the necessity of justifying future cuts to essential inspection staff.

4.3 Summary

Prosecutions of environmental offences cannot occur without adequate funding. In spite of this, the MOE budget has been decreasing steadily since 1992. There was no policy analysis at the basis of the decision to reduce the compliance budget. As a result, funding cuts have occurred in disregard of the precautionary principle and without customary policy analysis or risk assessment.

Staff cuts have also made it impossible for the MOE to keep track of and respond to calls and complaints lodged with the Ministry or to collect and store data in an organized manner.

Resources have been stretched, exposing certain sectors to diminished supervision and enforcement. For example, all water treatment plants were to be inspected before the end of 2000, however this comprehensive review was only accomplished by diverting industrial inspection staff to the inspection of water treatment plants [Linda McCaffrey, November 2000].

5. Legislative context

Prior to the Walkerton tragedy, prosecutions of water quality related cases were brought under the *Environmental Protection Act (EPA)* and the *Ontario Water Resources Act (OWRA)*.

² The Provincial Auditor has estimated it costs \$80,000 in salaries to monitor just one mining operation.

5.1 Recent Initiatives

After the Walkerton tragedy, the Government of Ontario introduced a series of measures to improve the protection of Ontario's drinking water. Several initiatives may have a significant positive impact on compliance and enforcement.

5.1.1 Toughest Environmental Penalties Act

On October 10, 2000, then-Minister of the Environment Dan Newman introduced a bill in the Ontario Legislature proposing the highest fines and longest jail terms in Canada for pollution offences. As of May 2001, the *Act* has been proclaimed as a part of the EPA. However, regulations are yet to be developed before it can have any effect on enforcement efforts. The *Toughest Environmental Penalties Act*, 2000 could dramatically increase the maximum fines under the EPA, the OWRA and the *Pesticides Act* [http://www.envirolaw.com/faxletter_fr.html]. Apart from increasing the maximum fines, the *Act* would also increase jail terms for a person convicted of a major offence from two years to five years, and increase the cap on administrative penalties from \$5,000 to \$10,000 per day.

5.1.2 Fines under the Acts

Persons or companies convicted under the EPA or the OWRA are normally subject to fines for non-compliance with Certificates of Approval, issued under the *Acts*. The amounts of fines vary depending on the type of violation for both the OWRA and the EPA. The maximum amounts for violations for both these *Acts* are tabulated below Table 5), reflecting the changes before and after the passage of the *Toughest Environmental Penalties Act*, 2000.

Table 5: Fine structure for EPA and the OWRA

Statutes	Fine for 1 st conviction for individual/day		Fine for subsequent conviction for Individual/day		Fine for 1 st conviction for corporation/day		Fine for subsequent conviction for Corporation /day	
	Pre-TEP*	Post-TEP	Pre-TEP	Post-TEP	Pre-TEP	Post-TEP	Pre-TEP	Post-TEP
EPA/ OWRA	\$ 100,000	\$ 4 million	\$ 200,000	\$ 6 million	\$ 1 million	\$ 6 million	\$ 2 million	\$ 10 million

* *Toughest Environmental Penalties Statute Law Amendment Act, 2000*

5.1.3 SWAT Team

In March 2000, just two months prior to the Walkerton tragedy, a Cabinet document revealed that the MOE requested resources to hire at least 138 new staff to effectively carry out its mandate. The government ignored the request [http://www.envirolaw.com/faxletter_fr.html].

However, on September 21, 2000, the then-Minister of the Environment Dan Newman announced the formation of a SWAT team to act as a highly mobile compliance, inspection and enforcement unit. Its stated purpose is to locate companies or individuals

systematically or flagrantly defying the law and threatening public health and the environment. The SWAT team has found a non-compliance rate of 45% in its investigations.

As of May 2001 all the 138 SWAT positions have been filled. Most of the staff have been hired on 18-month contracts [http://www.envirolaw.com/faxletter_fr.html], which could undermine the stability of the office. Although the creation of a SWAT team is a step in the right direction, it is too early to comment on its effectiveness.

5.1.4 Administrative Monetary Penalties (AMPs)

The MOE is also trying to complete its proposal for Administrative Monetary Penalties (AMPs), a US-inspired enforcement tool somewhat comparable to parking tickets that results in a large number of small fines. The benefits of administrative penalties are:

- they consume fewer resource and less time;
- they allow for enforcement on a wider scale;
- they lead to quicker resolutions;
- they are a smaller burden in terms of procedure; and
- they preserve resources for bigger cases.

For example, if IEB currently receives 20,000 Occurrence Reports annually, which result in the discovery of 6,000 suspected violations, due to limited resources, these violations result in only 1,200 investigations and approximately 350 prosecutions. AMPs are used to target the large number of violations that are never investigated or prosecuted.

The cost of pursuing AMPs is significantly lower than a regulatory prosecution. Jurisdictions using AMPs typically report that over 90% of AMPs are paid without appeal.

5.1.5 Drinking Water Protection Regulation

On August 8, 2000 the Ontario Ministry of the Environment (MOE) introduced the *Drinking Water Protection Regulation*, its regulatory response to the Walkerton tragedy. The regulation applies to all water treatment and distribution systems that require approval under the *Ontario Water Resources Act*. Key requirements under the regulation include:

- improved testing and treatment of water;
- mandatory regular water sampling by all waterworks with testing by accredited labs;
- stricter procedures for reporting contamination;
- more frequent inspections;
- upgrading many existing water treatment systems and facilities;
- the issuing of quarterly reports by large waterworks;
- notification of both the Medical Officer of Health and the MOE of adverse water quality; and

- public access to all sample results, approvals and orders.

Under this new regulation, municipalities in violation will face fines up to \$2 million, as well as possible incarceration of officials. Since there will be additional costs for water providers, the provincial government announced a \$240 million fund on August 11, 2000 to help small municipalities comply.

The DWPR also requires water treatment plants to submit quarterly reports to the MOE within 30 days of the end of each quarter. All water treatment plants must inform the public of the report's availability and make it easily accessible for them. Facilities serving more than 10,000 consumers are also required to post the report on the Internet.

5.1.6 Ground Water Monitoring Network

About 83% of Ontario residents are served by municipal water supplies and of this, 14% are served by groundwater. Approximately 80% of rural residents rely on groundwater. Groundwater quality monitoring, particularly from non-point sources, has not been very strictly enforced.

After the Walkerton tragedy, the Ontario government, in partnership with conservation authorities and municipalities, announced a \$6 million groundwater-monitoring network to ensure the protection and sustainability of Ontario's water resources. The Provincial Groundwater Monitoring Network is part of a comprehensive, multi-disciplinary range of actions, funding programs and consultations being developed to form a new groundwater strategy.

This network will provide sound information to enable the MOE to make decisions about how to best protect groundwater and achieve high quality in a sustainable manner. During the next three years, the ministry will work with local conservation authorities and municipalities to:

- install approximately 400 electronic monitors to measure water levels in wells across Ontario;
- establish a provincial groundwater information database;
- complete hydrogeologic mapping to support the selection of monitoring sites; and
- undertake chemical analysis of water samples.

The Ground Water Monitoring Network can play an important role in enforcement. The information database to be maintained by the network will depend on the regular monitoring of sites, which in turn will play an important role in detecting any kind of contravention, and in carrying out compliance or enforcement efforts.

5.2 Summary

There is considerable debate about whether the *Toughest Environmental Penalties Act* will result in higher fines being levied by judges. Unfortunately, there is no reason to expect that these higher penalties will have any impact as a deterrent, since maximum fines are rarely imposed.

Although the *Drinking Water Protection Regulation* allegedly establishes the highest water quality standards in Canada, and blocks some of the regulatory holes revealed by the Walkerton tragedy, it remains unclear who will monitor and enforce the Regulation, or with what resources.

Investigators do not have the tools required to carry out enforcement or compliance activities. They need facilities and specialized equipment to collect and analyze samples, and qualified scientific expertise for analyzing the findings and reporting the results. Unless new resources are committed and there is an adequate number of permanent, capable and dedicated staff carrying out timely inspections of water treatment facilities, making certain offenders are caught and tried, and making sure compelling evidence is presented to judges, it will neither be possible to enforce the new law nor will the courts impose higher fines.

Expectations are that fines will start rising again after the SWAT team begins its investigations. The number of charges laid for environmental offences had risen more than 25% between late 1999 and December 2000, and it is expected that number will continue to increase.

6. Conclusions

Residents of Ontario do not know what effort is being made by the Government of Ontario to enforce the laws protecting drinking water. The primary finding of this study is that the number of investigations sought and undertaken, the prosecutions undertaken, the number of convictions obtained, and the amount of fines assessed have all fluctuated dramatically, without careful analysis or apparent justification.

For example, in 1985 the number of convictions for environmental offences numbered less than 100. By 1991, that number had risen to nearly 299. Five years later, convictions had fallen to 121 only to rise to a new high of 412 by 1999. Fines collected, an important measure of the seriousness of offences, is one-third of the level achieved in 1992. This decline defies explanation.

It is impossible to demonstrate what impact these declines have had on drinking water quality, since the MOE does not compile statistics relating to enforcement activities for drinking water. Until such data is compiled, no comprehensive quantitative or qualitative analysis of the enforcement of drinking water standards can be rendered.

Predictably, enforcement effort and success is dependent upon capacity. Overall, the budget of the MOE has been cut by 68% since 1995. Funding for the Legal Services Branch, which actually prosecutes the offences, has also been cut by 39% from 1992/93 to 2000/01. Most alarmingly, the number of experienced staff has declined dramatically, while workloads have typically increased. Inadequate funding for frontline enforcement agencies will undermine new regulatory initiatives to improve drinking water protection.

Generally, a number of recent announcements by the Government of Ontario could improve enforcement activities. The *Toughest Environmental Penalties Act* provides additional penalties for prosecutors to apply. Also, since December 2000, the number of charges laid by the MOE has increased 25% from the same period last year. Unless prosecutors start regularly seeking higher fines for offences, however, stronger prohibitions will not act as greater deterrents.

Regarding standards, the *Drinking Water Protection Regulation* allegedly establishes the highest water quality standards in Canada, and addresses some of the regulatory weak links revealed by the Walkerton tragedy. Determining who is responsible for monitoring and enforcing the new regulation, and with what resources, are significant outstanding issues that must be resolved.

Prosecutions start with investigations. Maintaining a stable number of investigators throughout the province is a key determinant of adequate capacity to enforce the law. Establishment of the SWAT team is a positive step to redress an apparent imbalance; however, it is also an indication that previous staffing levels were insufficient. A review is necessary to determine whether investigation staffing numbers should be returned to the level of 1995.

Finally, a way must be found to level out the often wildly swinging trends in environmental enforcement. Allowing the public to see clearly how enforcement activity impacts on water quality protection is an equally important and necessary goal.

7. Attachments

7.1 List of Acronyms

C of A	Certificate of Approval
C.E.L.R	Canadian Environmental Law Reports
CWA	Clean Water Act (U.S.)
DWPR	Drinking Water Protection Regulation
DWSP	Drinking Water Surveillance Program
EPA	Environmental Protection Act (Ont.)
FIPPA	Freedom of Information and Protection of Privacy Act
FWPCA	Federal Water Pollution Control Act
IEB	Investigations and Enforcement Branch
MNR	Ministry of Natural Resources
MOE	Ministry of the Environment
ODWO	Ontario Drinking Water Objectives
OWRA	Ontario Water Resources Act
PA	Pesticides Act
SDWA	Safe Drinking Water Act
SDWIS/FED	Safe Drinking Water Information System/Federal Version
SWIP	Sewer and Water Inspection Program
TEPSLAA	Toughest Environmental Penalties Statute Law Amendment Act
USEPA	United States Environmental Protection Agency

7.2 Glossary

Inspector: person responsible for verification of regulatory compliance; conducts site visits, audits, examines substances and products, takes samples for analysis, examines records and other information, and responds to complaints.

Investigator: person responsible for investigating possible violations and for laying charges, where applicable.

Investigation: a systematic inquiry or examination to determine if a violation has occurred and to collect additional evidence, if required.

Prosecutions: A crown brief, in which one or more charges against one or more defendants are laid.

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Appendix 1: Enforcement Related to Water Quality

Water quality related cases and convictions:

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
May 1990 *Blackbird holdings Ltd.	2	4	2	90,000 6 months imprisonment which was later reduced to 15 days
Total	2	4	2	90,000
Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Feb, 1991 Toronto Electric Commission	1	2		2 acquittals
Dec, 1991 FAG Bearings Ltd.	2	2	2	11,275
Total	3	4	2	11,275
Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Jan, 1992 Vincent Deboer	1	1	1	1,000
Jan, 1992 Canadian Pacific Forest Products Ltd.	1	1	1	5,000
Nov 1992 The Consumer's Gas Company Ltd.	1	2	2	35,000
June, 1992 Corby Distillers Ltd.	1	1	2	20,000
May 1992 Dow Chemical Canada Ltd.	1	2	2	125,000
May, 1992 David Martin Harrison	1	1	1	800
Mar, 1992 Hemlo Gold Mines Inc	1	2	2	7,000
Mar, 1992 Hidden Valley	3	3	3	25,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
July, 1992 Mary Houben	1	1	1	500
Dec, 1992 Fabio and Raffaele Ingratta	2	2	2	700
Jan, 1992 Innopac Inc.	2	1	2	28,000
Mar, 1992 Lawrence Johnston Frederick Keller	2	1	2	8,750
May, 1992 Henry Lubers	1	1	1	1,000
May, 1992 M-B Investment Ltd.	2	4	4	18,200
Feb, 1992 Eddy Match Company Ltd.	1	2	2	8,000
Sept, 1992 Richard McKane	1	5	5	1,100 NF for three counts
Oct, 1992 Ross Muirhead	1	2	2	1,000
Oct, 1992 Susan Stackhouse	1	2	2	1,000
Jan, 1992 Ontario Hydro	2	2	2	20,500
Aug, 1992 Raymond Rammello	1	1	1	1,300
Jan, 1992 Rexwood Products Ltd.	1	5	5	32,000
Jun, 1992 Peter Skotidakis	1	1	1	5,000
Oct, 1992 Smith and Sons Garage Ltd.	2	5	5	8,000
Nov, 1992 Union Gas Ltd.	1	1	1	25,000
July, 1992 Weil's Food Products Ltd.	2	2	2	38,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
May, 1992 William Whelan	1	2	2	3,000
Jun, 1992 169527 Canada Inc.	1	2	2	17,000
Jun, 1992 Courtlads Fibers Canada	1	13	0	
Feb, 1992 UniRoyal Chemical Ltd.	1	1	1	NF
Total	38	69	59	436,850

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Jun, 1993 Bata Industries Ltd.	3	3	3	102,000
1993 Varnicolor Chemical Ltd.	4	4	1	8 months in prison for the director
Sept, 1993 Beatrice Foods Inc.	1	1	1	20,000
Aug, 1993 A & H Petroleum Services Ltd.	1	1	1	12,500
Aug, 1993 Alcan Aluminum Ltd.	1	1	1	80,000
Sep, 1993 Beatrice Foods Inc.	2	2	2	35,000
Nov, 1993 Burstrom's Resort Ltd.	1	2	2	500
Jan, 1993 Capital Water Supply Ltd.	3	8	8	3,750
Mar, 1993 Card Brothers Ltd.	1	3	3	4,000
June, 1993 Andre Chenier	1	2	2	2,400
Apr, 1993 David Coburn	1	1	1	1,000
Nov, 1993 Cold Springs farm Ltd.	3	3	3	92,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Sep, 1993 James R. Cook	1	1	1	400
Jul, 1993 Exclusive Auto Sales & Leasing Ltd.	1	1	1	3,000
Feb, 1993 Giffin Well Drilling Ltd.	3	6	6	3,500
Feb, 1993 Guardian Industries Canada Ltd.	2	2	2	26,000
Jun, 1993 Hillside Canning Ltd.	2	2	2	10,500
Jul, 1993 Township of Ignace	2	2	2	3,000
Jun, 1993 Imperial Oil Ltd.	1	2	2	5,000
Apr, 1993 George Jongeneel	1	2	2	1,500
Jun, 1993 Wayne Lafrance	1	1	1	1,000
Mar, 1993 Laidlaw Waste Systems Ltd.	1	1	1	14,000
Nov, 1993 Maurice Lamoureux Ltd.	2	5	5	47,500
Nov, 1993 Matachewan Consolidated Mines Ltd.	1	1	1	28,000
Nov, 1993 Goldteck Mines Ltd	1	1	1	14,000
Nov, 1993 Richard Mccloskey	1	1	1	2,500
Mar, 1993 Network Circuit Incorporated	2	2	2	5,500
May, 1993 Mark Nicholas Holdings Inc.	2	2	2	15,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Jun, 1993 Regional Municipality of Ottawa-Carlton	1	1	1	5,000
Dec, 1993 Regional Die Casting Ltd.	3	4	4	15,000 NF on one account
Nov, 1993 John Ryskamp	1	1	1	1,500
Nove, 1993 TCG Materials Ltd.	2	2	2	6,000
Jun, 1993 Greg Tetreau	1	1	1	2,000
Nov, 1993 Consolidated Mayburn Mines Ltd.	2	4	4	10,450
Sep, 1993 Darwin and Paul Vanwynsberghe	2	2	2	1,000
Oct, 1993 James Augustaus Vernon	1	2	2	600
Sep, 1993 Uniondale Cheese Factory Inc.	1	2	2	4,000
Oct, 1993 MacMillan Bloedel Ltd.	1	2	1	25,000
Jan, 1993 MOE, National Hard Chrome Plating	1	1	1	45,000
Aug, 1993 913856 Ontario Corporation C.O.B. National Hard Chrome Plating	3	18	18	40,000
Total	65	103	99	689,100

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Feb, 1994 Hank Baltessen	1	1	1	1,000
Feb, 1994 Cabot Canada Ltd.	1	1	1	15,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Jun, 1994 John Featherstone	1	1	1	750
Apr, 1994 Lloyd Heldmann	1	1	1	1,200
May, 1994 ICI Canada Inc.	1	1	1	65,000
May, 1994 Imperial Oil ltd.	1	1	1	43,000
Dec, 1994 Vanboekel Hog farms Inc.	2	2	2	2,500
Aug, 1994 Exolon-Esk Company of Canada	3	13	13	212,000
Mar, 1994 Green Lawn Farm Ltd.	2	2	2	11,000
Nov, 1994 Thomas Moore	1	3	3	2,000
May, 1994 Price Waterhouse Canada Inc.	1	2	2	25,000
Oct, 1994 Pasquale Bros. Inc.	2	3	3	6,350
Mar, 1994 Scaletta Sand & Gravel Ltd.	2	3	3	2,000
Oct, 1994 Scott Brown	1	2	2	750
Jan, 1994 John Fahrngruber	1	1	1	500
May, 1994 Thomas Douglas Jones	1	1	1	1,500
Sep, 1994 Nitrochem Inc.	1	1	1	14,000
Sep, 1994 Nitrochem Inc.	2	3	3	22,000
Oct, 1994 Patterson Potato Farms Ltd.	2	4	4	12,000
Jan, 1994 Peter Skotidakis	1	2	2	15,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
May, 1994 Vito Fera	1	5	5	500
Nov, 1994 Malette Inc.	1	2	2	2,000
Mar, 1994 Dale Perusse	1	4	4	750
Feb, 1994 Ken Pierman Contracting Inc.	2	2	2	3,500
Total	33	61	61	459,300

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Jan, 1995 Canadian Pacific Ltd.	1	1	1	45,000
Feb, 1995 Imperial Oil Ltd.	1	2	2	30,000
Nov, 1995 Nitrochem Inc.	1	1	1	50,000
Total	3	4	4	125,000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Dec, 1996 Faulknet well Drilling Co. Ltd.	1	77	18	10,000
1996 Domtar Inc.	1	1	1	28, 000
1996 The township of Russell	1	1	1	8,000
1996 Malette Inc.	1	n.a.	1	8,000
Sep, 1996 Municipality of Ottawa Carleton	1	1	1	22,000
Total	5	80	22	68, 000

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Sep, 1997 Imperial Oil Ltd.	1	1	1	22,000
Feb, 1997 Port Colbourne Poultry	1	4	2	20,007
Total	2	5	3	42,007

Name of company	#of Parties	#of charges	# of convictions	Amount of fine
Jul, 1998 Dow Chemicals Canada Inc.	1	1	1	10,000
Nov, 1998 Shamrock Chemicals Ltd.	3	6	6	57,500
1998 MacMillan Bloedel Ltd.	1	1	1	83,343.15
Total	5	8	8	150, 843.15

**An NF entry indicates no fine for a particular conviction. These are either suspended sentences, creative sentences or sentences such as community work in lieu of a fine.

Summary of the previous data:

Table 8: Enforcement Related to Water Quality

Year	#of Parties	#of charges	# of convictions	Amount of fine
1990	2	4	2	90,000
1991	3	4	2	11,275
1992	38	69	59	436,850
1993	65	103	99	689,100
1994	33	61	61	459,300
1995	3	4	4	125,000
1996	5	81	22	68, 000
1997	2	5	3	42,007
1998	5	8	8	150, 843

Source: Compiled through the review of The Canadian Environmental Law Reports, Vol. 1-24 and the Offences Against the Environment Reports for the years 1992, 1993, 1994

Appendix 2: Freedom of Information Request

Please Note: A \$5.00 application fee is required for all requests.

Request for: <input checked="" type="checkbox"/> Access to General Records <input type="checkbox"/> Access to Own Personal Information <input type="checkbox"/> Correction to Own Personal Information	Name of Institution request made to: Ministry of the Environment
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If request is for access to , or correction of , own personal information records: Last name appearing on records: <input type="checkbox"/> same as below, or: _____

<input checked="" type="checkbox"/> Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/> Miss	Last Name: Donnelly
First Name: David	Middle Name:
Address: (Street/Apt. No./P.O. Box/R.R. No.) Canadian Environmental Defence Fund, 2 College St, Suite 208	City/Town: Toronto
Province: Ontario	Postal Code: M5G 1K3
Telephone Number (Day): (416) 323-9521	Telephone Number (Evening): ()

Detailed description of requested records, personal information or personal information to be corrected. (If you are requesting access to or correction of your personal information, please identify the personal information bank or record containing the personal information, if known.)

I would like to request for the following data: <ol style="list-style-type: none"> 1. Copies of the Ministry of Environment's budget for the time period of 1985 to 2000. The copies of the budget should specify the amount that has been spent on legal services (e.g. amounts spent for inspections, prosecutions, lab tests etc) and enforcement costs. 2. The number of inspectors under the Ministry of the Environment in the province of Ontario for the period of 1985 all the way to 2000 3. The number of complaints related to emissions or spills associated with drinking water which were filed with the MOE from 1985-2000 4. The number of inspections done by the MOE between 1985-2000 for drinking water related cases 5. The number of investigations done by the MOE between 1985-2000 for drinking water related cases 6. The outcome of investigations carried out by the MOE relating to drinking water from 1985-2000 in terms of : <ul style="list-style-type: none"> ▪ How many parties were charged and what the charges were ▪ How many prosecutions resulted from the investigations ▪ How many parties were convicted and what the convictions were

- How many fines were assessed by the MOE
- The actual amount of fines collected
- How many cases were settled and what kind of penalties were assigned
- How many Director orders or control orders were given for that period
- How many formal warnings were issued to offenders
- How many mandatory abatement orders were issued to offenders
- How many voluntary abatement orders were issued to offenders

All the data is requested for the period of 1985 to 2000 and is associated with drinking water enforcement capacity and effort of the Ministry of environment.

Note: If you are requesting a correction of personal information, please indicate the desired correction and, if appropriate, attach any supporting documentation. You will be notified if the correction is not made and you may require that a statement of disagreement be attached to your personal information.

Preferred method of access to records:	<input type="checkbox"/> Examine Original	Signature:	Date:
	<input checked="" type="checkbox"/> Receive Copy		
<i>For Institution Use Only</i>			
Date Received:	Request Number:	Comments:	
Personal information contained on this form is collected pursuant to the <i>Freedom of Information and Protection of Privacy Act/Municipal Freedom of Information and Protection of Privacy Act</i> and will be used for the purpose of responding to your request. Questions about this collection should be directed to the Freedom of Information and Privacy Co-ordinator at the institution where the request is made.			

Appendix 3: Annual Enforcement Summary, 1992-1998

JAN-12-2000 11:30

M.O.E. IEB HEAD OFFICE

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ANNUAL ENFORCEMENT SUMMARY

CALENDAR YEARS 1991 - 1998

This chart compares statistics on enforcement activities for the calendar years 1991 & 1998.

ACTIVITY	1991	1992	1993	1994	1995	1996	1997	1998
Assigned Investigations	1569	1502	1605	1452	1372	821	874	1046
Prosecutions Initiated	309	322	289	289	170	128	142	208
Charges Laid	1,896	2,158	1,570	1,640	1,045	758	951	805
Individuals Charged					158	110	102	159
Companies Charged					125	104	130	270
Charges against Individuals					615	342	488	353
Charges against Companies					430	416	463	452
Cases with Convictions	299	266	211	237	188	121	136	137
Cases Withdrawn	30	21	17	27	35	20	8	15
Cases Dismissed	52	31	21	34	18	7	5	12
Individuals Convicted	166	426	248	362	253	182	205	105
Companies Convicted	388	352	246	284	218	148	225	183
Number of Fines	674	686	464	551	387	273	262	391
Charges with Convictions	757	768	512	652	504	366	418	414
Companies with Convictions					230	162	215	243
Individuals with Convictions					274	204	203	171
Fines against Companies					\$1,845,279	\$750,535	\$760,100	\$627,325
Fines against Individuals					\$1,220,225	\$453,499	\$195,760	\$241,515
Jail Terms	0	0	10 d	0	7-1/2 m	430 d	5 m	
Other Penalties	\$687k	\$266k	\$48k	\$373k	\$2.7	\$298k	\$285k	
Fines Imposed	\$2.5	\$3.4	\$2.1	\$2.4	\$3.0	\$1.2	\$955k	\$863k

Please Note: 1) These figures are subject to change when or if new information is received, eg. appeal.

activity/enforcement/summary/PC/Appendix 3 - April 18, 1999