

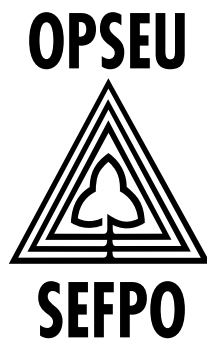
SUBMISSIONS CONCERNING

RECOMMENDATIONS ABOUT

PROVINCIAL GOVERNMENT
OPERATIONS AND RESOURCES
(PUBLIC HEARINGS 2 AND 3)

BY

ONTARIO PUBLIC SERVICE
EMPLOYEES UNION



JULY, 2001

1. OPSEU and the Ministry of the Environment Public Servants it Represents

1. The Ontario Public Service Employees Union (OPSEU) focus in these submissions is on the Ministry of the Environment. As previously mentioned, OPSEU represents all non-management and non-engineering staff at the Ministry of the Environment (MOE), or about 928 employees of a ministry total of 1,384. (OPSEU also represents all non-management staff at the Ontario Clean Water Agency. Submissions about OCWA have been made for Public Hearing #1 and will be made again at public hearings when drinking water providers are considered.)

2. OPSEU's participation on behalf of MOE staff in Part II of the Walkerton Inquiry has been grounded in extensive membership consultation, through networking, project team meetings and workshops held across the province, culminating in the production of an issue paper, Renewing the Ministry of the Environment, and then these submissions. That issue paper set out the position of MOE staff on the most crucial issues facing their Ministry. These submissions build on that paper, and respond to additional issues raised in Part 1B and by other Inquiry participants. OPSEU wishes to acknowledge the continuing contribution from a number of MOE staff.

3. It has been noted time and again that the staff of the Ministry of the Environment are dedicated to their work, that it is a kind of vocation, that it is a "calling" (James Merritt, former Assistant Deputy Minister, Inquiry Testimony, April 12, page 43; Julien Wieder, Investigator, Inquiry Testimony, April 24, page 187; Managing the Environment (Gibbons Report), pages 37-38). "The main strength of the Ministry of the Environment is its dedicated, experienced and knowledgeable staff" (Renewing, Executive Summary). OPSEU's MOE members are of course concerned about their jobs but that is by no means the limit of their concern. They are truly dedicated to preserving and improving the state of Ontario's environment, and ensuring safe drinking water. And, they see clearly that a stronger Ministry is needed for those reasons. They want to build on the Ministry's strengths and resolve its weaknesses.

2. Summary of Recommendations

4. OPSEU's initial set of recommendations have already been provided to the Commission as of July 3, 2001. Those recommendations have now been somewhat augmented and they are set out below. The rationale for the recommendations follows.

3. Recommendations Regarding Provincial Government:

A) Overall Policy & Standards:

Recommendation #1:

- That the policy responsibility and standard setting function regarding water issues be centralized in the MOE, and include relevant functions currently performed by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) and the Ministry of Municipal Affairs and Housing (MMAH);
- That this policy responsibility and standard setting function not be subject to the Red Tape Commission.

F) Operations:

Recommendation #2:

- That the MOE Water Branch (previously recommended) foster a more watershed focussed approach to source protection issues, involving regional implementation in co-ordination with regional entities including Conservation Authorities;
- That the Water Branch have responsibility for an integrated source protection/drinking water safety program including at least the following:
 - An integrated database system for all water data, including groundwater, surface water and treated water;
 - Operational guidelines for water treatment plant inspections;
 - Other elements that will be the subject of recommendations at Public Hearing #4: Source Protection, including ground and surface water monitoring, well head protection, well inspections and Permits to Take Water.

Recommendation #3:

- That the Water Branch work closely with branches in the Operations Division, including Abatement and Investigations & Enforcement, each of which would provide regional/watershed water co-ordinators.

Recommendation #4:

- That all current MOE programs and responsibilities concerning water be retained and not be further privatized;
- That partnership or other co-operative arrangements with entities external to the MOE (as advocated for by the “Gibbons Report”), be built on the core of a strong MOE and not be a substitute for it;
- That the MOE arrange to employ research and expertise external to the Ministry through a Research Advisory Committee.

Recommendation #5:

- That there not be a strategic “shift” from a single Ministry responsible for compliance to shared responsibility (as advocated for by the “Gibbons Report”), but rather that the single Ministry retain responsibility for compliance and that complementary responsibilities be assigned to other entities;
- That Administrative Monetary Penalties be brought into effect following development of an appropriate policy governing their use.

Recommendation #6:

- That clear operational policies setting out duties and responsibilities be established for each branch or section of the MOE and for subordinate entities including District Offices, and that there be similar policies or directives setting out individual duties and responsibilities.

Recommendation #7:

- That the Ministry of the Environment become proactive, rather than reactive, and, for that purpose, make full use of front-line staff expertise in the course of policy and program development;
- That there be regular meaningful consultation by senior management with front-line staff on both organizational and substantive issues;
- That an internal Ministry comment process be established for new policies and programs, which shall include a senior level guidance/consultative committee drawn from front-line staff (peer selected);
- That Ministry procedures for policy and program development include a more general consultation program with sufficient time allotments to permit meaningful and effective consultation with staff.

Recommendation #8:

- That the Premier's Office issue a policy statement reaffirming the value of the public service as an institution;
- That the statement reinforce the importance of full and frank advice and confirm that there will be no reprisals for providing it;
- That the Minister of the Environment issue a similar statement concerning the role of the public servants in the Ministry of the Environment.

Recommendation #9:

- That there be a proactive commitment within the Ministry of the Environment to transparency, including an outreach/public education program and fostering of public access to Ministry data and expertise;
- That the Communications Branch of the Ministry of the Environment be given a mandate of ensuring a) public involvement in environmental decision-making and b) public access to ministry data and expertise;
- That the public outreach functions discontinued by the Ministry in 1995-1996 be reinstated, including the Advisory Committee on Environmental Standards, the Environmental Assessment Advisory Committee and the MISA Advisory Committee;
- That public outreach include ongoing public consultation, including community events;
- That records of prosecutions and enforcement be fully provided to the public and that the publication of reports such as "Offences Against the Environment" and the "State of the Environment" be reinstated.

Recommendation #10:

- That the MOE's business plans contain discussion of any substantive changes in the regulatory framework, Ministry policy, or Ministry operational capacity, with an assessment of the impacts or risks of any such changes;
- That the public be provided with the same assessment of impacts or risks as the Ministry supplies to Cabinet.

Recommendation #11:

- That public servants be able to exercise their own individual discretion about public dissemination of information, and that it no longer be necessary for all public dissemination of information to be screened by the Communications Branch (and Premier's Office).

Recommendation #12:

- That Part IV of the Public Service Act, “Whistleblower’s Protection”, be proclaimed.

Recommendation #13:

- That the Government commit to maintaining a strong Investigations and Enforcement Branch as a quasi-independent branch within the Ministry of the Environment;
- That the recently announced supervisory structure for IEB be maintained and strengthened;
- That all Occurrence Reports be reviewed by the IEB and investigated if deemed appropriate;
- That there be regular meetings between Abatement and IEB;
- That any necessary adjustment of the respective roles of Abatement and IEB is best done within the Ministry.

Recommendation #14:

- That the government’s present commitment to mandatory compliance be maintained and strengthened, so that violations are at least subject to mandatory orders, and that all the legal tools of mandatory compliance be consistently and broadly available to staff.

Recommendation #15:

- That the SWAT program of Abatement staff and Investigation Officers be used as a model for revitalizing the focus of abatement on specific problem areas, including water and sewage;
- That the current SWAT resources be integrated into the district offices;
- That Abatement staff within district offices be organized as teams with *de facto* specializations;
- That one such specialization be “water/sewage” which would incorporate a (previously recommended) focus on water treatment plants;
- That group leaders be assigned for such teams.

Recommendation #16:

- That the Ministry of the Environment provide its staff with the necessary practical tools;
- That an inventory of capital budget needs be conducted in consultation with front-line staff;

- That Ministry capital budgets be increased to provide for planned, rational capital expenditures to ensure staff have the tools and equipment they need to carry out their jobs;

Recommendation #17:

- That the Ministry reduce operational emphasis on data base inputting of functions performed;
- That the MOE develop an Integrated Data System for internal reports and that all present reporting systems be integrated into that new system;
- That such a system be completed and implemented within one year.

Recommendation #18:

- That municipal water treatment plant inspections be conducted permanently on an annual basis;
- That they not be conducted by junior environmental officers without adequate mentoring;
- That water treatment plant inspections not be pro forma, but be thorough and also involve the following aspects:
 - Use of unannounced inspections at the discretion of the inspector;
 - Sample auditing, to be done according to a protocol to be developed.

Recommendation #19:

- That Regulation 459/00 be re-visited to ensure that it addresses anticipated risks and does not involve unnecessary testing, work and expense for municipalities;
- That the Regulation include a requirement for testing source samples, and that those be forwarded to the Ministry of the Environment for analysis.

Recommendation #20:

- That spill response procedures be revised to ensure that a trained MOE officer is quickly dispatched to the scene of a spill.

G) Human Resources Management:

Recommendation #21:

- That the Ministry of Environment hire sufficient staff to fulfill its mandate to ensure safe drinking water and protect drinking water sources;
- That the Operations Division of the Ministry of the Environment be staffed on the basis of an “adequate resources for program delivery” model, whereby the full staffing complement required to properly fulfill the relevant programs and responsibilities of the Ministry would be determined, then that staffing budgeted;
- That in respect of technical support (the labs being the subject of later recommendations) there be a reconstruction of the Ministry’s capability to provide timely and sound scientific information, and technical application of same, to Abatement and Enforcement Staff and to concerned parties outside the Ministry;
- That increased administrative support resources be supplied so that Abatement and Enforcement staff can spend more time on field work and less on administrative functions;
- That the annual staffing budget be provided for comment within the Ministry, and externally, and that the staffing budget be included in the Ministry’s annual business plan;
- That the time allocation for programs include recognition of the time needed to follow up and resolve environmental concerns.
- That the staffing not be done on the basis of a standardized formula for all regions, but on the basis of an assessment of the needs of each region’s ecosystem;
- That the Ministry be staffed, as much as possible, by permanent and not contract staff.

Recommendation #22:

- That, at a minimum, the budget and staff cuts to the Ministry of the Environment in 1996 and 1997 be reversed.

Recommendation #23:

- That the Ministry of the Environment substantially increase its rate of retention of existing staff and recruitment of additional skilled professionals through positive measures;
- That a recruitment and retention program be developed, with a focus of improving the quality of working life and morale;
- That this program include Human Resources policies and compensation levels designed to ensure such improvement.

Recommendation #24:

- That the Ministry of the Environment be responsible for enhancing the knowledge, skills and practical expertise of its existing staff and new hires;
- That the Ministry of the Environment develop, in consultation with its staff, a training and development program that focuses on the job needs of its staff;
- That the training be up-to-date, consistent, province-wide, offered on a continuous basis and that time to take the training be allotted;
- That the Ministry's training program have the goal that all new hires and all existing staff in each of the job classifications receive training in the same areas;
- That it reflect the need of staff to have a working knowledge of a range of complex issues, and therefore include a focus on scientific and technical issues, including new technologies and emerging threats to the environment;
- That all relevant abatement staff receive compulsory training in the inspection of water treatment plants so they know the indicators of poor operation and potentially unsafe water quality and how to address those situations pro-actively;
- That long-serving, experienced staff receive training through “refresher” courses that are geared to them, and not to new hires, and which reflect their “on-the-ground experience”;
- That staff be able to access training delivered externally to the Ministry, i.e. courses offered by universities and industry conferences;
- That the Ministry hold its training courses not only in Toronto but throughout the province;
- That the training budgets of the Human Resources branch and the individual divisions of the ministry be increased to reflect the ministry's increased commitment to training;
- That continuous upgrading of knowledge and expertise be a recognized part of staff's ongoing obligations and that time to engage in such activities be budgeted.

Recommendation #25:

- That the Ministry provide for succession planning, mentoring programs and other mechanisms to ensure the transfer of institutional memory and knowledge from long-serving Ministry staff to younger, less expert staff, including a 6 month apprenticeship program.

H) Public Involvement:

Recommendation #26:

- That the recommendations concerning public involvement as made by the Canadian Environmental Law Association and the Canadian Environmental Defence Fund be adopted;
- That the MOE be resourced to carry out these recommendations.

I) Emergency Planning:

Recommendation #27:

- That the MOE co-ordinate the creation of a mandatory emergency plan in respect of every water treatment plant in the Province of Ontario;
- That there be full involvement of the operator, the Ministry of Health and the public in the formulation of the plan;
- That the plan be tabled with the public.

4. Recommendations Regarding Relationships to Other Public Institutions:

A) Overall Co-ordination Role of Provincial Government:

Recommendation #28:

- That the overall co-ordinating role of the Ministry of the Environment be fulfilled at least in part through a Senior Consultative Committee including representatives of:
 - Other ministries;
 - Municipalities;
 - Health Units;
 - Conservation Authorities;
 - Non-governmental organizations; and
 - The public.
- That, for at least the initial phase, the public be represented by Concerned Walkerton Citizens;
- That the Senior Consultative Committee be convened by the Water Branch of the Ministry of the Environment;
- That the Committee operationalize the responsibilities set out in the drinking water policy and arrange co-ordinated implementation through binding Memoranda of Understanding;
- That those Memoranda of Understanding be tabled with the public;

- That the Water Branch of the Ministry of the Environment arrange regional/watershed co-ordination of source protection, in conjunction with local actors including any Conservation Authority;
- That, on a regional/municipal basis, the MOE, Health Unit, and water treatment plant operator arrange emergency readiness concerning water treatment plant deficiencies.

3. Rationale in Support of OPSEU's Proposed Recommendations:

Recommendation #1: Centralization of Policy Responsibility and Standards Setting Function in the MOE:

5. The front-line staff of the Ministry of the Environment agree wholeheartedly with the d'Ombraïn, Machinery of Government for Safe Drinking Water in Ontario paper's discussion of the policy and standards setting deficiencies of the provincial government, and the advisability of rectifying them with a lead Minister and Ministry (d'Ombraïn, Machinery, paras. 247-254 and 426-436). The observations in that paper accord with staff's own assessment of Ministry shortcomings. Any recent policy strength gained by the Ministry is seen to be the result of a central agency desire to manage the Walkerton tragedy fallout, and is not thought to be a permanently sustained commitment to a stronger Ministry. The Ministry itself is not strong or respected enough to "push through" needed policies and standards.

6. Nor does it have a sufficiently broad mandate. Important policy issues dealt with by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) should instead be led by the MOE. For example, the fleshing out of the regulatory framework under the new Nutrient Management Act 2001 is currently proposed to be done by OMAFRA as a "partner" with MOE and "stakeholders". (See:

<http://www.gov.on.ca/OMAFRA/english/infores/releases/061301.html>).

It should instead be led by MOE. The balance between environmental protection and farm/agribusiness economics would then be better maintained. Environmental planning issues should be "headquartered" at the MOE, rather than the MOE being consulted by the Ministry of Municipal Affairs and Housing (MMAH). (More detailed submissions about the relevant roles of OMAFRA and MMAH will be provided for Public Hearing No. 4: Source Protection.)

7. One institution not discussed in the d’Ombrain paper is the Red Tape Commission. Earlier testimony at the Walkerton Inquiry has documented that Commission’s direct involvement in regulatory issues (Daniel Cayen, Director, MOE, Inquiry Testimony, May 17, 2001; Norm Sterling, former Minister, MOE, Inquiry Testimony, June 27). This Commission is now permanent and its stated mandate is to “review all new regulations and legislation affecting business, applying a business impact test designed to prevent the creation of new barriers to job creation or better government” (See http://www.redtape.gov.on.ca/english/whatsnew/default.asp?action=show&article_id=93). OPSEU has fundamental objections to this Commission. In part, it’s role raises the concern of finding “the environment sacrificed for business” (Robert Shaw, Inquiry Testimony, April 23, page 159), despite at least one Minister’s view that it would not inhibit regulations to “protect people” (Norm Sterling, Inquiry Testimony, June 27, page 80).

8. Speaking more structurally, this entity does not form part of any integrated Ministerial structure for the development of a drinking water policy. That structure needs to focus on the formulation of a strong policy and be able to do so without interference. Exempting that policy development from the scrutiny of the Red Tape Commission could be said to constitute special treatment for the Ministry of the Environment. It would be a strong signal within government that there is a real commitment at the most senior levels to the formulation of a drinking water policy whose primary values are environmental protection and safe drinking water. Furthermore, any drinking water policy will still come before Cabinet for review, approval and endorsement.

Recommendation #1:

- **That the policy responsibility and standard setting function regarding water issues be centralized in the MOE, and include relevant functions currently performed by the Ministry of Agriculture, Food and Rural Affairs (OMAFRA) and the Ministry of Municipal Affairs and Housing (MMAH);**
- **That this policy responsibility and standard setting function not be subject to the Red Tape Commission.**

Recommendations #2 and #3: Putting the Water Branch to Work

9. OPSEU has recommended the creation of a Water Branch as a central way to increase Ministry attention on water issues (OPSEU submission to Public Hearing No. 1, Recommendation #7). Inquiry testimony from MOE water experts at the Walkerton Inquiry has reinforced that it would be better for all such experts to be consolidated in one branch (Godfrey Jenkins, Ontario Drinking Water Specialist and Patricia Lachmaniuk, Group Leader-Drinking Water Specialist, Inquiry Testimony, May 10, pages 29-31). It can be further noted that the Drinking Water Co-ordinating Committee attempts to co-ordinate the Ministry's approach to drinking water between otherwise dispersed personnel but it has no "final terms of reference" and there is still no "co-ordinated overall drinking water program" (Dale Henry, Inquiry Testimony, May 10, pages 14-15).

10. OPSEU has already discussed the general role of the Water Branch in respect of water treatment plants (See OPSEU submissions to Public Hearing No. 1, paras. 47-76). We now wish to make some specific recommendations aimed at further delineating the operations of the Water Branch.

11. An increase in watershed or place-based approaches to source protection, and an examination of some increased role for conservation authorities have been topics of discussion in Part II of the Inquiry. The implementation of any such direction will not happen without increased provincial government leadership, direction and monitoring. Indeed, conservation authorities have requested exactly that (See Conservation Ontario, The Importance of Watershed Management in Protecting Ontario's Drinking Water Supplies, page 44, under the heading "Clarifies the Role of the Provincial Government and Water Management"). In respect of the Ministry of the Environment, that leadership role should be vested in the Water Branch.

12. An integrated database system for all water data, including groundwater, surface water and treated water has long been advocated. (Expert Meeting, May 22, section 1.2.1 – Reporting; Gibbons Report, Summary, page 27 and Expert Meeting Notes, May 3 and 4, section 6.1.3). The practical relevance of such a system was demonstrated by Inquiry testimony in Part 1A. Michelle Zillinger testified that it might have enabled the disturbing trends in Walkerton's adverse samples to be seen more clearly

(Michelle Zillinger, Environmental Officer, Inquiry Testimony, November 7, pages 59-63). The Inquiry has heard that staff resources are now being belatedly allocated to the task (Phil Bye, District Supervisor, MOE, Inquiry Testimony, November 14, page 181-182). However, things are not moving quickly. Dr. Bern Schnyder testified about the database and said “it’s definitely a good idea, and its something one needs to work towards, but the implementation is substantial and it needs to be well thought out and worked out as a project” (Dr. Schnyder, Inquiry Testimony, May 7, page 158). Comments to the same effect and about the substantial amount of public interest in the data generated by Regulation 459/00 compliance were made by Ministry representatives at an Expert Meeting (Expert Meeting Notes, June 6, section 4.3, items 13-14). The best database would integrate water testing of all three relevant kinds of water: groundwater, surface water and treated water. It would be integrated with external data collectors including the MOH labs (See Dr. Helen Demshar, Director, MOH, Inquiry Testimony, May 7, page 330). The Water Branch should be put in charge of developing such a database.

13. As referenced in OPSEU’s submissions for Public Hearing No. 1, the Water Branch would be the lead part of the Ministry on water treatment plant operations issues. This would include operational guidelines for water treatment plant inspections. For example, the Branch would update the draft “Communal Waterworks Inspections Guidance Manual”, dated June 2001, which came before the Inquiry during the recent motions to strike notices of adverse report (Zillinger, Inquiry Testimony, July 3, page 56).

14. There are many other elements to be included in the policy development and leadership functions of the Water Branch including well inspections and Permits to Take Water, both of which will be the subject of further submissions for Public Hearing No. 4: Source Protection.

15. The Water Branch will need to operationalize its policy and scientific leadership. This would be done through close work with the Abatement and Investigations & Enforcement branches. They in turn need to be fine-tuned in order to produce a more focussed regional/watershed approach. In each region, a regional/watershed co-ordinator should be assigned to take geographic responsibility for forwarding Water Branch programs.

Recommendation #2:

- That the MOE Water Branch (previously recommended) foster a more watershed focussed approach to source protection issues, involving regional implementation in co-ordination with regional entities including Conservation Authorities;
- That the Water Branch have responsibility for an integrated source protection/drinking water safety program including at least the following:
 - An integrated database system for all water data, including groundwater, surface water and treated water;
 - Operational guidelines for water treatment plant inspections;
 - Other elements that will be the subject of recommendations at Public Hearing #4: Source Protection, including well inspections and Permits to Take Water.

Recommendation #3:

- That the Water Branch work closely with branches in the Operations Division, including Abatement and Investigations & Enforcement, each of which would provide regional/watershed water co-ordinators.

Recommendation #4: No Further Privatization

16. Fragmentation of the MOE by creation of an arms-length agency has been advised against because it would weaken the MOE (d’Ombraín, Machinery, para. 448, OPSEU Public Hearing No. 1 submissions, Recommendation #9, paras. 97-100). If something is wrong to do in large sections, it is no less wrong if done in small pieces.

17. The current government has a pronounced interest in “Alternative Delivery Strategies”, including delegation of functions to the private sector (d’Ombraín, Machinery, paras. 127-134, 328-331), and the government continues to move in this direction. The Public Service Statute Law Amendment Act, 2001 (Bill 25) received Royal Assent on June 29, 2001. Ministries, including the Ministry of the Environment, had previously been solely responsible for exercising employment authority over public servants. They can now delegate most of that employment authority to supervisors in other Ministries or to private sector managers (Bill 25, s. 5). There is clearly an intention to proceed with further privatization, either by “delegating” public service functions or supervision of public servants or both.

18. It is of continuing concern to staff of the Ministry of the Environment that such “delegation” will occur at the very time that the Ministry needs to be rebuilt. For example, there is concern that one of the reasons that the 25 new Water Inspectors were all hired as contract staff (Robert Shaw, Inquiry Testimony, April 18, pages 71-72), rather than permanent staff, is not so much that the need for their services will pass, but that there is an intention to privatize water inspections.

19. A central OPSEU objection to such privatization is well put in d’Ombrain, Machinery, at para. 368 e), “routine delegations of responsibility to persons outside the Ministry should be avoided; they confuse accountability and leave ministers in the position of having responsibility without the means of ensuring it is exercised properly”. The externalization of core functions of the Ministry of the Environment also produces an unnecessary widening of the circle of policy development, implementation and feedback advocated by d’Ombrain at para. 479. Such delegation comes at substantial institutional cost including resultant lack of development of internal expertise, lack of the performance of functions in accordance with the intentions of government, loss of the building up in the Ministry of valuable institutional memory, and last but not least, further demoralization and uncertainty.

20. Finally, Ministry staff point out that when you are dealing with such environmental and public health issues, it is crucially important that the Ministry have its own front-line “eyes and ears”. As discussed in Renewing the Ministry of the Environment, field work is crucial to the generation of reliable data for “ongoing studies and unpredictable emerging issues” (Renewing, para. 18). It is also central to reliable water treatment plant inspections, where results need to be directly factored into policy and funding determinations and quickly responded to in a regulatory fashion.

21. There will of course be many circumstances in which the skill and experience of parties external to government should be utilized. As discussed in OPSEU’s submissions to Public Hearing No. 1, the government of Ontario has announced an intention to move forward with implementation of the Gibbons Report. One of the “strategic shifts” advocated in that report is an increased focus on “partnerships” with other non-governmental entities. Ministry staff have long been interested in working more closely with other entities. However, those “partnerships” should be built on the core of a strong multi-function MOE and not be a substitute for it.

22. “Partnerships” should be used for ancillary or additional functions such as specialized research (i.e. universities) and extended field monitoring (i.e. conservation authorities).

23. Indeed the administration of relationships with external agencies is in and of itself an important government function. Where it is desired to employ entities external to the MOE, arrangements must be made with those agencies, the nature of the tasks and duties to be performed by those agencies established, contracts drawn up, activities monitored, results obtained and digested, and benefits of the relationship extracted. All of these functions require time and resources on the part of Ministry staff. If time and resources are not expended, then contracts are administered to a lesser extent in the public interest and to a greater extent in the interest of the insufficiently monitored contractor.

24. At one point, the Ministry used a “Research Advisory Council” to organize and fund external research projects. Ministry staff would like to see the return of such relationships wherein a strong Ministry worked successfully with other entities. A version of this project appears to be one of the recommendations of the Gibbons Report, as discussed under the heading “Access to Scientific and Technical Expertise” (Gibbons Report, Summary, page 26).

Recommendation #4:

- That all current MOE programs and responsibilities concerning water be retained and not be further privatized;
- That partnership or other co-operative arrangements with entities external to the MOE (as advocated for by the “Gibbons Report”), be built on the core of a strong MOE and not be a substitute for it;
- That the MOE arrange to employ research expertise external to the Ministry through a Research Advisory Committee.

Recommendation #5: Rather than “Sharing Responsibilities”, Maintain a Ministry Based Focus on Compliance

25. In the Gibbons Report, there is also a recommendation for “Strategic Shift number 5: Towards an approach based on shared responsibility with the regulated community...”. There is a sub-recommendation for “delegating responsibility (not necessarily accountability) for some activities to other partners or levels in the system” (Gibbons Report, pages 6-7).

Front-line staff of the Ministry of the Environment are deeply concerned that a proposed “strategic shift” of regulatory responsibility will be detrimental to environmental protection and the provision of safe drinking water.

26. Ensuring compliance with legislation is not always a popular job. Compliance is resisted by the many who find it constraining or irksome. It requires institutional commitment and resources. Such a focus is best maintained within a Ministry. That Ministry can then ensure that it has the necessary structure including a strong investigation and enforcement branch. Compliance is then a primary organizational priority. It is also carried out in accordance with the policy and approach of that Ministry. In the case of compliance carried out by the Ministry of the Environment, there should be a commitment to rigorous enforcement, with environmental protection and drinking water safety as the guiding values.

27. During the Expert Meetings, there was general consensus that, voluntary programs and economic incentives may very well be cost effective, but they must be backed up by the “whip” of regulation and enforcement (Expert Meeting, May 3 and 4, point 9), and that a shift away from a “strong regulatory framework” was not appropriate (Expert Meeting, May 22, page 26).

28. It is very much the view of the MOE front line staff that the provincial government has a non-transferable obligation and responsibility to protect the health and safety of the citizens of Ontario. This responsibility and legal obligation cannot be shared, and any discussion centered on a “shared responsibility concept”, particularly with the regulated community, is one that ultimately must fail.

29. The idea of such positive sharing is unrealistic. Perhaps it is derived from a false mental image in which all participants have the funds and resources to cooperatively do whatever is needed to achieve environmental well-being for all. The experience of MOE staff is that many regulated entities are primarily motivated by finance, profit, and avoiding liability. The “Rule of Law” is needed to ensure compliance.

30. Strong government presence and leadership can form a basis to discuss “partnerships” for delivery of environmental protection, but with a different viewpoint: the Government’s role in the partnership is to set fair laws, based on the intent to protect the public welfare. The regulated

community “partners” can make every effort to obey these laws, and co-operate with compliance and enforcement through appropriate reporting.

31. While not easily found in the Gibbons Report recommendations, many of these insights are supported by one of the research papers attached to the Gibbons Report, Research Paper No. 1: Environmental Compliance Assurance. It conducts a review of international “best practices” and reaches the following conclusions, in part. First, it is correctly pointed out, that traditional enforcement is costly (Paper 1, page 4). However, it is noted that there is “an inherent logic to the effectiveness of enforcement/abatement as compliance tools” as supported by a KPMG survey of corporate environmental managers that shows companies implement best environmental practices because of the legal duty to comply with the regulations followed by the potential for Board of Directors liability (Paper 1, page 9). There is a further realization that “voluntary” initiatives can lead to mistrust (Paper 1, page 11) and that alternative measures are still in the development stages (Paper 1, page 20). There is also a realization that there is a need for a full range of enforcement, abatement, co-operative agreements and compliance assistance, and that choosing one instrument over another is difficult and requires careful review (Paper 1, pages 6-8).

32. Based on these comments, Ministry staff submit that the responsibility and cost of traditional enforcement must be borne and accepted by government, however irksome that may be from time to time. Such measures are effective and necessary.

33. OPSEU staff also note that any movement to alternative tools is something that requires detailed and careful work by Ministry staff to ensure that it occurs effectively. A credible compliance based Ministry with the capacity to investigate alternatives, while maintaining public trust, is the key to sustainably implementing any alternative strategies. The Ministry lacks that capacity now. As the “Briefing Note – Extent of MOEE Budget Reductions since 1995–1996” put it, the Ministry has “reduced capacity to engage in partnership programs with businesses, municipalities and individuals which assist in compliance” (Inquiry Documents, Dicerri, Volume 6, Tab 2, page 2).

34. For example, Administrative Monetary Penalties were introduced in theory by Bill 82 but the necessary regulation was never passed. Administrative monetary penalties may be a useful middle ground between

abatement and prosecution (James Merritt, Inquiry Testimony, April 12, page 134). Such penalties would ensure compliance in circumstances where an enforcement proceeding would not be warranted. Such penalties have to be carefully integrated so there does not seem to be any favouritism and so that they are not used as an excuse to avoid compliance. Nevertheless, they do appear to be a useful mechanism and steps should be taken to implement them.

Recommendation #5:

- That there not be a strategic “shift” from a Ministry responsible for compliance to shared responsibility (as advocated for by the “Gibbons Report”), but rather that the Ministry retain responsibility for compliance and that complementary responsibilities be assigned to other entities;
- That Administrative Monetary Penalties be brought into effect following development of an appropriate policy governing their use.

Recommendation #6: Clear Operational Policies

35. The Ministry of the Environment has been in a continuous state of flux and change since at least 1995. Traditional networks and methods of informal organization have been significantly eroded. The Ministry continues to be a “political football”, with announcements being made relatively regularly. The Secretariat to implement the Gibbons Report has now been established but it does not purport to provide any leadership in respect of current structure, except to “limit disruption to current organizational structure, people and locations” (See OPSEU, Public Hearing No. 1 Submissions, paras. 84-96).

36. In addition, there has been a continuing difficulty with internal Ministry communications about the vision or direction of the Ministry. Such communications are perceived by many staff to be “fuzzy talks” that do not contain any useful degree of clarity of roles and responsibilities (Gord Robertson, Inquiry Testimony, April 24, page 184, line 24). As far as most staff are concerned, the recent presentations concerning the implementation of the Gibbons Report have been to the same effect.

37. Ministry staff seek clearer delineation of roles and responsibilities for branches and individuals. Although the Delivery Strategies document

discussed in Inquiry testimony (Robert Shaw, Inquiry Testimony, April 19, pages 15-16, 169-171) was widely viewed as being a cost-cutting device, it did have the agreed advantage of providing some real help to staff in prioritizing their work. Ministry staff wish to have that kind of clear direction but suggest it be offered in respect of proactive duties and responsibilities for much needed environmental protection work. Some progress on one topic can be found in the “very prescriptive advice and guidance” contained in the draft “Waterworks Inspections Guidance Manual” (Zillinger, Inquiry Testimony, July 3, page 56).

38. MOE staff report there is a wide degree of variation in the organization of District Offices. The same program can be delivered very differently in two different parts of the province. This lack of consistency is problematic because it does not seem to stem from tailoring programs to local conditions but rather from disorganization and lack of clear direction. Front line staff want an organization that has clear policies, in which they can clearly see themselves. The concept of clear responsibilities and accountability must be implemented at the organizational level and on the front-line.

Recommendation #6:

- That clear operational policies setting out duties and responsibilities be established for each branch or section of the MOE and for subordinate entities including District Offices, and that there be similar policies or directives setting out individual duties and responsibilities.

Recommendation #7: Policy and Program Development Based on Front-Line Staff Expertise

39. In Renewing the Ministry of the Environment, OPSEU members recount that senior Ministry staff have less technological expertise and less connection with the front-line than ever before, but that “the Ministry of the Environment now works from the top down” (Renewing, paras. 143-145). Staff further note that:

In undertaking [a] new, proactive direction, the Ministry could greatly improve its performance overall by consulting with its staff and involving them in decision-making about priorities, programs and policies. The staff of the Ministry of the Environment are a great resource – committed and capable- who are better qualified

than anyone else in the province to build a proactive program of environmental protection. (Renewing, para 151)

40. Meaningful front-line consultation is not something that managers undertake readily, particularly in a stressed organization like the MOE. The practice needs to be fostered by explicit requirements for consultation with staff.

41. In the “1997 Business Plan, Communications and Staff Involvement Program” document, senior staff note the following:

- Ministry staff are experiencing difficulty in coping and understanding the process and direction of organizational change as described in the ministry’s first business plan. A common criticism: staff do not see the “big picture.”
- This may lead to increased resistance to change and the spread of a “victim mentality” among staff. The ministry’s public credibility also may be strained as messages about change and environmental priorities are perceived to be “mixed” and fragmented.
- Therefore, it is necessary to: (1) build greater trust by staff in the change process, and in those who are leading it; (2) give staff greater opportunity to become involved in change. As a result, people will experience greater meaning and control over change as it is applied to their job situation.
- Many people know about the forces that are “pushing” organizational change. They have yet to see how or if it is being “pulled” toward some end state. What is the vision of the new ministry?
- Staff have had minimal involvement in the development of the first business plan (released spring 1996). Cynicism prevails. “Everything has already been decided; what we say has no influence.” The business plan is viewed as a mask for cuts.
- The new two-year business plan is now in the works as part of the annual estimates process. A draft will be due late December/early January 1997. Yet, to credibly demonstrate management commitment to staff involvement in the change process, the focus of communications should be on finding a role for staff in development of the new business plan rather than trying to explain what the old business plan was about. This approach will be more

effective through the application of dynamic two-way communications techniques. (Inquiry Document, 1026023).

With an updating of the specific references, those comments are still applicable today.

Recommendation #7:

- That the Ministry of the Environment become proactive, rather than reactive, and, for that purpose, make full use of front-line staff expertise in the course of policy and program development;
- That there be regular meaningful consultation by senior management with front-line staff on both organizational and substantive issues;
- That an internal Ministry comment process be established for new policies and programs, which shall include a senior level guidance/consultative committee drawn from front-line staff (peer selected);
- That Ministry procedures for policy and program development include a more general consultation program with sufficient time allotments to permit meaningful and effective consultation with staff.

Recommendation #8: Reaffirmation of the Value of the Public Service and the Importance of Speaking the Truth to Power

The Value of the Public Service

42. The public service's sense of self-worth has taken a significant beating in Ontario in recent years (d'Ombrain, Machinery, para. 332-334). The extent and style of the cuts were seen to reflect a view that public servants were not performing valuable functions. Comments from the present government with respect to the attractiveness of "alternative service delivery" have continually exacerbated the problem. The Gibbons Report even comments, with respect to policy development, about "a general decline in the ability to manage external and internal knowledge and information because of limited resources and a lack of clarity with respect to the legitimate role of the public service in this area" (Gibbons Report, page 201). The issue is referred to in the retirement speech of Rita Burak, then Secretary to Cabinet, where she stated: "But sadly, many people in the public service today feel that public service is no longer valued" (Management Board Secretariat, Topical, July 21, 2000, page 1).

43. The problem has been particularly acute in the Ministry of the Environment. There has been extensive evidence in the Inquiry that there is a morale problem in the Ministry of the Environment (see the following Inquiry Testimony: Jim Merritt, April 12, pages 110-111, 124-125; Nancy Johnson, April 24, page 180; Julian Wieder, April 25, page 116; André Castel, May 15, page 180 and May 16, pages 176-177). The problem remains. In a newspaper article in the Fall of 2000, the then union co-Chair of the MOE Ministry Employee Relations Committee said:

“Since the **cuts**, everybody’s been walking around like zombies,” said Doug McDougall, an investigations officer with the ministry in Timmins, who also chairs the ministry’s employee-relations committee.

...Ambitious civil servants have been told to avoid the **Environment** Ministry at all costs. “It’s the kiss of death for your career”, said a senior civil servant in another Ministry. (Globe and Mail, June 3, 2000)

44. Why does this matter? It matters because organizations need to have the internal culture which supports their function. The public service has a unique function to perform and it requires special cultural support.

45. The public service needs to be motivated to act in the public interest. A Strong Foundation: Report of the Task Force on Public Service Values and Ethics is a leading federal report on public service culture, which makes this point well:

...Service to the public and to the public interest is the vision of the public service, and it is a creative, essential and compelling vision...

...We think the pursuit of higher quality customer service is a noble and worthy goal, to be pursued for its own sake, but we do not think it is everything. From the point of view of public service values, it is important to remember that government is much more than service to individual clients. It is also about public purpose and national goals, about the administration of law, about social ordering, about the reconciliation of competing purposes and interest, about peace, order and good government. It is this larger constellation of concepts and purposes, from which public service values in their totality must flow, that is captured in the concept of the public interest. (A Strong Foundation, pp. 32 and 38).

The public service must fight off the compromising influences of private interests and provide its best advice. The public service must be a “self-starter” in terms of watching out for the public interest. Individual “stakeholder” groups cannot be relied on to put forward the broader public good. The public service must act for the public good.

46. It would be very timely for the Premier’s Office to take some of the advice proffered in Ms. Burak’s retirement speech:

“We must keep alive in the coming years our passion for a professional public service organization that respects and values those who are part of it. We must re-affirm our commitment to making a difference and celebrate our achievements, which the rest of the world knows are considerable.

“That is what civil servants can do. What politicians must do is come together on this one issue: a commitment to publicly support the importance of a professional public service.

Speaking Truth to Power

47. A particular responsibility of public servants is to tell politicians what they may not want to hear. The Strong Foundation document discusses this.

....Ministers are legitimately in charge. But one of the roles and duties of a professional public service in the service of democracy is to ensure that ministers have the most complete information and analysis possible before they take policy and program decisions. This is sometimes called “speaking truth to power”. Ministers should be fully aware of the major options of action and the potential consequences; and it is the duty of a public service to ensure that they are, even in cases where ministers find unwelcome the analyses with which they are presented. This is not an obstacle or hindrance to democracy, it is one of its pillars. Once decisions are taken, the role of a public service is to carry them out to the best of its ability, within the law and ethical values. And it will be all the more comfortable in doing so if it has already performed its duty of ensuring that ministers are fully informed about the choices to be made in the first place. (A Strong Foundation, p. 16)

The importance of “speaking truth to power” was well illustrated during the course of the Walkerton Inquiry. The cuts proposed by the government raised concerns about risks that the government needed to be advised about.

It was important that the government be told exactly and fully about those risks. At the same time, it was quite clear that the government in question was going to proceed with “downsizing”. Many public servants were to be laid off. Security of tenure was viewed as very shaky. In those circumstances, it would have taken a real sense of duty and professionalism to ensure that the necessary cautions were provided to the government.

48. These dynamics can be seen reflected in the testimony of the senior MOE civil servants whose job it was to advise the current government about the 1996 cuts. They wished to be seen as providing “options” to the politicians. They were quite concerned that they not be seen as obstructionists. As André Castel put it, “if we interfered with the political process, it would be very dangerous” (Inquiry Testimony, May 15, page 86). It is for the Inquiry to review in Part 1B whether these civil servants unduly shied away from telling the Tories “that’s crazy, you can’t do that” (Inquiry Testimony, May 14, page 63). What is clear now is that fully informing ministers about choices and their consequences should not be viewed by a public servant as dangerous.

49. The importance of being prepared to speak the truth to power and the courage required to do so at times was highlighted by the testimony of Dr. Schabas. His view was that it was “part of responsible decision making” to hear the views of those with the expertise (Dr. Richard Schabas, Inquiry Testimony, June 26, pages 160-161).

50. At the Walkerton Inquiry, the Premier testified that he valued public servants and appreciated the importance of them “giving their best advice”. He acknowledged that it was not desirable for there to be a contrary perception in government. He further stated that if there was such a perception then this was something that “we’ll have to continue to work on”. (Michael Harris, Premier of Ontario, Inquiry Testimony, June 29).

51. Although the Premier does not agree, such an unhealthy perception exists throughout the Ontario Public Service. In her 1998/99 report, the Ombudsman states “many of the values upon which the public service has historically relied, including the obligation to “speak truth to power”, even when the truth is unwelcome, have been seriously undermined” (d’Ombrain, Machinery, para 333).

52. Such an unhealthy perception also exists in the Ministry of the Environment. Nancy Johnson testified about the “fear” in the Ministry in 1997 (Nancy Johnson, Inquiry Testimony, April 25, page 164). It has not dissipated. It was for this reason that OPSEU supported the amendment to the Public Inquiries Act concerning no “adverse employment action” against persons coming forward with information (Public Inquiries Act, as amended S.O. 2000 c. 14). OPSEU’s work on the Inquiry has been continually hampered by the reluctance of Ministry staff to speak publicly about their concerns. A confirming incident took place in respect to the Peterborough Town Hall, where a local manager implied to employees that it might not be in their career best interests to participate (Steve Clancy, Peterborough Town Hall, Inquiry Transcript, April 10, pages 169-175). The government and the manager quickly assured them otherwise, but concerns remain.

53. In all these circumstances, it would be of assistance to the operation of the Ministry of the Environment for the value of the public service to be respected and reaffirmed, including the importance of “speaking truth to power”.

Recommendation #8:

- That the Premier’s Office issue a policy statement reaffirming the value of the public service as an institution;
- That the statement reinforce the importance of full and frank advice and confirm that there will be no reprisals for providing it;
- That the Minister of the Environment issue a similar statement concerning the role of the public servants in the Ministry of the Environment.

Recommendation #9: Transparency and Public Information

54. The importance of transparency of institutions has been highlighted throughout the Inquiry. So has the importance of public involvement in environmental decision-making and public access to information.

55. The general and sad decline of the Ministry of the Environment’s reputation for the “creation and dissemination of knowledge and information” has been documented by the d’Ombrain paper and the Gibbons Report (d’Ombrain, Machinery, paras. 247-250). The cutbacks of 1996 and 1997 had a substantial detrimental effect on the transparency of the Ministry of the Environment. A number of “windows” were closed including:

- Senior Advisory Committees;
- Several front “line delivery offices”;
- Active community liaison (Inquiry Documents, Dicteri, Vol 6, Tab 2, p. 2).

56. In addition, non-governmental organizations complain about being unable to obtain simple factual information (Expert Meeting Notes, May 22 and June 5, CEDF comments). Inquiry issue paper authors d’Ombrain and Blundell also document being unable to obtain important information (d’Ombrain, Machinery, paras 95-97; Blundell, Hydrogeological Research, Introduction, 4th para). In a last piece of embarrassment, the Canadian Association of Journalists recently dubbed the Ministry of the Environment as Canada’s most secretive agency and presented it with the “Code of Silence” award (For more information, see: <http://micro.newswire.ca/releases/May2001/26/c8435.html/42015-0>).

57. The lack of information sharing by the Ministry of the Environment has, of course, not dampened the great need for public information on all aspects of water protection (Expert meetings, May 22, pages 26-27). One participant in the Peterborough Town Hall said that the public was “thirsty for knowledge” (April 10, p. 31, line 12). Indeed, it has been noted that the lack of “up front” provision of information has caused the public to seek the information through Freedom of Information requests (Gord Robertson, Inquiry Testimony, April 24, page 183).

58. The central institution within the Ministry most responsible for the provision of public information is the Communications Branch. Inquiry testimony from Mr. Cayen implies that the Branch’s main focus has been to ensure the Ministry communications are “on message” and supportive of the government’s current policy direction, rather than to provide ongoing information to the public about Ministry activities (Daniel Cayen, Inquiry Testimony, May 17, 2001, pages 98-114). In order to correct this, and address the Ministry’s lack of transparency, the Communications Branch should be given a new mandate, one of ensuring a) public involvement in environmental decision making and b) public access to Ministry activities, data and expertise.

59. The discontinued senior consultative committees should be reinstated. It is the view of Ministry staff, and others, that the advisory committees

performed valuable functions (Dr. Winfield, Inquiry Testimony, May 28, pages 44-49). These committees have not been replaced with any “new formal mechanism” (Business and Fiscal Planning Branch Panel, Inquiry Testimony, May 16, pages 91-92). Various line staff now have the obligation to consult but must fit it in with their regular duties and without a special focus on the need to do so.

60. The report entitled “Offences Against the Environment” was halted. This information is apparently just recently available on the Ministry of the Environment website (Inquiry Testimony, April 24, page 167), but it should be given a renewed profile. The status reports on the state of Ontario’s environment, “the State of the Environment” Reports, were halted in 1995. To the extent that they were replaced with anything, they were replaced with the Ministry’s business plans (Linda Stevens, former Deputy Minister, Inquiry Testimony, May 29, pages 87-90). Those status reports performed the valuable function of providing a focussed and concise review of crucial aspects of the Ministry’s activities. Those reports should be reinstated.

61. Public consultation is not simply a matter of consultation with “those in the know”, such as higher profile non-governmental organizations and lobbyists. It extends to the local and community level. District offices of the Ministry of the Environment have a valuable function to perform in ensuring direct community involvement in environmental issues. Front line staff suggest instituting “community councils” attached to every district office. While this proposal will need much work to make implementation practical, perhaps the idea may help to truly engage the public in drinking water safety issues.

62. It is proposed that involvement at the District level be comprised of two distinct groups – one involving all who wish to participate which we will call the “Community Environmental Plenary” (CEP), and the second smaller and more focused group to be known as the “Community Environmental Committee” (CEC). The activities undertaken by these bodies can be expanded as interest and resources allow, but initially the intent is to provide a forum for information, advice and concerns regarding the local environment to flow both to and from the MOE.

63. The first group proposed, the CEP, is seen as a broad open umbrella group that will allow existing environmental interest groups, industry and business groups, and interested individuals, in fact any person or group with

an interest, to become involved and participate in helping to make their Ministry more responsive to their needs. The purpose would be to raise concerns and have an initial discussion about them.

64. The next level, the CEC, allows for a more focused exchange to follow up on issues raised at the Plenary. The needs and resources required to deal with concerns can be evaluated in a program-specific context that is tailored to the community. This level would require a larger commitment of time and effort from the participants on both the MOE and community sides. A term of service of two years or more may be needed to reach a useful level of familiarity with the technical issues and considerations, and understanding of the processes.

65. Some additional advantages to the proposed structures could be: 1) no direct taxpayer funding after the start-up, (although the funding could be generated through a surcharge on environmental penalties [AMP's and fines] and fundraising); 2) the CEC provides an umbrella group for local cooperation and direction which can function both with MOE and independently as needed; 3) the umbrella still allows each group to pursue its own agenda, but with input from each other.

66. OPSEU has already made a recommendation to Public Hearing No. 1 that a guiding principle of a drinking water policy should be recognition of the role of the public service in facilitating public involvement (OPSEU Submission to Public Hearing #1, Recommendation #3). That requires resources. The staffing resources needed to properly engage in public outreach and transparency were cut in 1996 and 1997 and have not been restored. Those resources need to be made reinstated in order to implement any renewed commitment to transparency.

Recommendation #9:

- That there be a proactive commitment within the Ministry of the Environment to transparency, including an outreach/public education program and fostering of public access to Ministry data and expertise;
- That the Communications Branch of the Ministry of the Environment be given a mandate of ensuring a) public involvement in environmental decision-making and b) public access to Ministry activities, data and expertise;

- That the public outreach functions discontinued by the Ministry in 1995-1996 be reinstated, including the Advisory Committee on Environmental Standards, the Environmental Assessment Advisory Committee and the MISA Advisory Committee;
- That records of prosecutions and enforcement be fully provided to the public and that the publication of reports such as “Offences Against the Environment” and the “State of the Environment” be reinstated;
- That public outreach include ongoing public consultation, including “community councils”.

Recommendation #10: MOE Business Plans Should Set out “Impacts”

67. In 1996, as a result of the difference between the Cabinet budget submission and the business plan published thereafter, the Ministry was less than candid with the public about its assessment of the “impacts” of the budget cuts. Senior Ministry staff said it was ultimately the decision of the Minister as to whether the information in the Cabinet business plan should also go in the public business plan (Carmen Gauthier, Inquiry Testimony, May 15, page 148). However, it was their view that the same duty of candor is owed to the public as to Cabinet (Castel, Inquiry Testimony, May 16, pages 83 and 84). Ministry staff indicated that if they had been asked about the less candid wording in the Ministry business plan they “would have suggested using the same words as in the [Cabinet] business plan” (Castel, Inquiry Testimony, May 16, page 69, lines 1-3).

68. In order to restore public confidence in government disclosure of risks concerning the environment, and in order to ensure ongoing transparency about any changes to the Ministry of the Environment’s operations, future Ministry business plans should contain open discussion of any significant changes in Ministry regulation or operations, along with a rationale and risk assessment, and the same information provided to Cabinet should also be provided to the public.

69. In the course of the events leading up to the Walkerton tragedy, there appear to be three major pieces of information kept confidential despite compelling public interest in disclosure:

- The assessment of risks of the 1996/97 budget cuts;
- The lists of functions no longer being performed by the Ministry in accordance with the Delivery Strategies document (kept

confidential at least in part due to concerns about resultant non-compliance (Robert Shaw, Inquiry Testimony, April 19, pages 174-176));

- Professional assessments of the need for regulatory change to require private labs to disclose adverse water samples to entities other than their client.

In all of these cases, public provision of the information would have been highly informative and might have caused public debate that would have either led to a substantive change in policy or educated members of the public and other institutions (such as municipalities) to govern themselves accordingly.

Recommendation #10:

- That the MOE's business plans contain discussion of any substantive changes in the regulatory framework, Ministry policy, or Ministry operational capacity, with an assessment of the impacts or risks of any such changes;
- That the public be provided with the same assessment of impacts or risks as the Ministry supplies to Cabinet.

Recommendation #11: Discretion of Public Servants to Provide Information to the Public

70. Public servants have an individual responsibility to conduct themselves in accordance with their office. They take oaths of allegiance and secrecy (Public Service Act, s. 10). For many years, public servants in the MOE engaged in media contact and other public provision of information without any notable difficulty.

71. Under the current government, Ministry staff are now effectively prevented from providing much direct public information. The Commission has heard that, prior to the summer of 1995, automatic press releases were issued when the Investigations and Enforcement Branch laid charges or obtained convictions (Weider and Robertson, Inquiry Testimony, April 24, pages 168-171). Thereafter staff would directly answer media questions about the facts and the disposition of the case. Then the practice changed. Communications Branch would no longer issue automatic press releases. When any staff was contacted by the media, the questions would be elicited and sent to Communications Branch. Thereafter, permission would be

sought through channels up to the Premier's Office before the staff member would be advised as to whether s/he could answer the questions and, if so, a script would be provided. This process frustrated staff and suffocated communication with the media and the public. As Gord Robertson testified, the result was that "you feel like you're being muzzled" (Gord Robertson, Inquiry Testimony, April 24, page 172).

72. There has been no positive rationale related to drinking water safety for the Ministry requirement that all public communications be screened through the Communications Office or for all information screened through the Communications Office to be forwarded to the Premier's Office. It is now time to restore public confidence in the operations of the Ministry of the Environment and to demonstrate leadership in transparent government operation in respect to drinking water safety. There should be a significant "loosening of the reins" so as to permit public servants to engage in communications with the public in the manner that had taken place prior to 1995.

73. There is no suggestion being made here that public servants should be able to say whatever they personally feel like saying to the public. The public service should continue to exercise their professional discretion, including contacting the Communications Branch in appropriate cases. It is of course understood that the Communications Branch would control policy announcements.

Recommendation #11:

- That public servants be able to exercise their own individual discretion about public dissemination of information, and that it no longer be necessary for all public dissemination of information to be screened by the Communications Branch (and Premier's Office);

Recommendation #12: Whistleblower Protection

74. Public servants may on occasion be in possession of information that should be disclosed even if politicians conclude that they do not wish to disclose it. Whistleblowing is a safeguard for public safety, which ensures citizens are informed of risks. The policy arguments concerning whistleblower's protection have been discussed at length in Dobell, Social Risk, Political Rationality and Official Responsibility: Risk Management in Context, page 17 and the cases referred to therein.

75. For the Walkerton Inquiry itself, the equivalent of whistleblowing protection was enacted through an amendment to the Public Inquiries Act. OPSEU's experience was that this protection helped to embolden those public servants who did come forward and contribute to the work of the Inquiry.

76. The Public Service Act contains Part IV, "Whistleblower's Protection" which was passed by the Legislature but never proclaimed. The Introduction to that part states: "The purposes of this Part are to protect employees of the Ontario Government from retaliation for disclosing allegations of serious government wrongdoing and to provide a means for making those allegations public". Part IV is a detailed code of procedure focussing on the role of a special Counsel. When a public servant has a concern about what the public needs to know, then he or she may inform the special Counsel, who will determine which things the public will be informed about. "Serious government wrongdoing" includes "an act or omission of an institution....if it poses a grave health or safety hazard to any person or a grave environmental hazard" (Part IV, s. 28, 13). Proclamation of Part IV would protect whistleblowing and it would act as a clear signal that the government is committed to public information on crucial safety issues including water safety.

Recommendation #12:

- That Part IV of the Public Service Act, "Whistleblower's Protection", be proclaimed.

Recommendation #13: A Strong IEB Within the MOE

77. In its submissions concerning Public Hearing No. 1, paras. 101 to 107, OPSEU has already set out why there should not be a separate enforcement agency. It is important that the investigation and enforcement function be performed within the Ministry of the Environment. However, it is also important that the Ministry of the Environment be structured to ensure that the investigation and enforcement function is performed as well as possible.

78. This requires resources. The IEB must be comprised of well trained, well equipped, dedicated individuals. All Provincial Officers should undergo regular training, in order to keep up to date with all new and revised legislation, policies, procedures, guidelines and case law. They must be

afforded sufficient resources and time to properly deal with each of the seemingly innumerable environmental issues.

79. Technical support in fields such as laboratory analysis, plant toxicology, animal toxicology, hydrogeology, waste disposal and treatment, pollution control devices and chemical and civil engineering should be readily available to assist officers with environmental issues and spills. This expertise assists in the confirmation of the reasons for the adverse effects caused by the release of a contaminant into the natural environment (e.g. fish death due to ammonia spill into water).

80. In addition to resources, IEB needs to have a “quasi independent” structure. It is for that very reason that the Investigation and Enforcement Branch was originally established. The Ministry wanted a “specific difference” between the two activities of abatement and enforcement in order to avoid conflict arising out of abatement work with polluters and to ensure that enforcement activity occurred without undue compromise (Jim Merritt, Inquiry Testimony, April 12, page 40).

81. This quasi-independent IEB structure is one that has worked generally well for the Ministry, and OPSEU certainly recommends that it be maintained. The recently announced structure of a regional IEB Supervisor in each region should also be maintained (Weider, Inquiry Testimony, April 24, page 59). All occurrence reports should be reviewed by the IEB Supervisor so that any decision to not investigate or enforce an occurrence would only be made after obtaining the concurrence of an IEB Supervisor.

82. The operating procedures discussed under Recommendation 6 above should also include a requirement for regular meetings between IEB and Abatement to discuss the general relationship, common questions and concerns, and specific violations.

Recommendation #13:

- That the Government commit to maintaining a strong Investigations and Enforcement Branch as a quasi-independent branch within the Ministry of the Environment;
- That the recently announced supervisory structure for IEB be maintained and strengthened;
- That all Occurrence Reports be reviewed by the IEB and investigated if deemed appropriate;

- That there be regular meetings between Abatement and IEB;
- That any necessary adjustment of the respective roles of Abatement and IEB is best done within the Ministry.

Recommendation #14: Keep Mandatory Compliance

83. Regardless of the historical experience with mandatory versus voluntary compliance in respect of water treatment plants, the Ministry of the Environment has now clearly established that mandatory compliance will be utilized (Zillinger, Inquiry Testimony, November 6, pages 169-175). Front-line staff of the Ministry of Environment support this position. The restoration of public trust and confidence in the supervisory role of the Ministry of Environment requires that mandatory compliance be used.

84. Ministry staff also report that water treatment plant operators against whom mandatory compliance orders are issued are often surprisingly grateful to receive them. The water treatment plant operator's non-compliance usually has systemic origins related to lack of staffing or funding or training. The operator can use the mandatory order to extract more resources from his own institution in the form of increased staffing or equipment or training. The mandatory order assists the water treatment plant operator in getting his institution to the right capacity.

Recommendation #14:

- That the government's present commitment to mandatory compliance be maintained and strengthened, so that violations are at least subject to mandatory orders, and that all the legal tools of mandatory compliance be consistently and broadly available to staff.

Recommendation #15: Expanding the SWAT Concept:

85. The government has recently announced that the Soil, Water and Air Team (SWAT) will be permanent (See <http://www.ene.gov.on.ca/envision/news/062501.htm>). The SWAT program consists of proactive teams of designated abatement and enforcement staff working in specific sectors. At present, the three sectors are plating, biosolids and processing. In each of these areas there is focussed proactive attention to industry compliance, with the following organizational attributes:

- Managerial commitment;

- Training;
- Resources; and
- Adequate manpower.

Front-line staff generally feel that the SWAT teams are highly effective.

86. Indeed, these SWAT teams contrast quite favourably with the current unsatisfactory reality in abatement offices. Environmental Officers are performing inspections of all kinds of types, dealing with a broad range of issues, and not developing adequate expertise in specific areas (Jim Mahoney, Inquiry Testimony, April 18, page 101). The current situation is so unsatisfactory that *de facto* specializations have tended to arise in district offices. Some work groups have organized themselves in a more efficiently sub-specialized fashion.

87. Front-line staff are of the view that the SWAT team concept should be formalized and formally expanded to all aspects of abatement and investigation and enforcement work. The SWAT model should be fully integrated into the district offices. The result would be specialized groups of officers working in conjunction with investigation and enforcement personnel taking a proactive look at all priority sectors.

88. One such sector should be “water/sewage”. The junior inspectors currently carrying water treatment plant inspections should be incorporated into that model. The “water/sewage” specialization would be broader than water treatment plant inspections, and would include all of those concerned with municipal plants dealing with water. Such work groups should have team leaders.

Recommendation #15:

- That the SWAT program of Abatement staff and Investigation Officers be used as a model for revitalizing the focus of abatement on specific problem areas, including water and sewage;
- That the current SWAT resources be integrated into the district offices;
- That Abatement staff within district offices be organized as teams with *de facto* specializations;
- That one such specialization be “water/sewage” which would incorporate a (previously recommended) focus on water treatment plants;
- That group leaders be assigned for such teams.

Recommendation #16: Give us the Tools to do the Job

89. As set out in Renewing the Ministry of Environment, “between 1995 and 1999, the Ministry of Environment’s capital budget was cut by 90%”. Staff do not have the needed technical equipment or vehicles. They are handicapped in doing the environmental field work monitoring, investigations and inspections that are at the core of their work. “Staff confront challenges thrown in their path every day by the simple fact that they do not have the tools to do their jobs” (Renewing, paras. 114 and 115).

Recommendation #16:

- That the Ministry of the Environment provide its staff with the necessary practical tools;
- That an inventory of capital budget needs be conducted in consultation with front-line staff;
- That Ministry capital budgets be increased to provide for planned, rational capital expenditures to ensure staff have the tools and equipment they need to carry out their jobs;

Recommendation #17: Less Bean Counting

90. Ministry staff are strongly of the view that “we’re counting what we do, instead of doing what counts” (Renewing, para. 76). There are a large number of forms and computer entries that must be made in respect of Ministry activities. As set out in Renewing the Ministry of the Environment, “to properly document all the information collected during the day to day work on any of the 200 program activities and/or inspections, an Inspector must enter information into one of several databases”. The approximately 7 databases must all be used and they are not properly integrated (Renewing, para. 80). The amount of time taken to do such data entry is really quite a significant burden (Renewing, para. 82).

91. Senior Ministry staff acknowledge that the complaint about excessive counting or tracking of work is frequently heard (Robert Shaw, Inquiry Testimony, April 23, pages 167-168).

92. An Integrated Data System (IDS) has long been promised to staff by the Ministry, but it is “not yet fully functional” (Shaw, Inquiry Testimony, April 23, page 175). This is a continuing source of frustration. But, the real concern of the front-line staff is that excessive “paperwork” takes them away

from doing the needed job of protecting the environment at a time when they can ill-afford to be working inefficiently.

Recommendation #17:

- That the Ministry reduce operational emphasis on data base inputting of functions performed;
- That the MOE develop an Integrated Data System for internal reports and that all present reporting systems be integrated into that new system;
- That such a system be completed and implemented within one year.

Recommendation 18: Thorough Water Treatment Plant Inspections

93. The Ministry has now put a higher priority on annual water treatment plant inspections. As the performance of water treatment plants improves, it may be appropriate to tailor inspection schedules more specifically to the real inspection needs. However, at the present time, public trust and confidence requires full annual inspections and the front-line Ministry staff agree with such a requirement.

94. Twenty-five junior environmental officers have been hired on contract to ensure water treatment plant inspections are carried out (Robert Shaw, Inquiry Testimony, April 18, pages 71-72). Ministry staff advise that, although there is some flexibility about their use, for the most part, those junior inspectors are actually conducting the inspections themselves. This is of significant concern to staff, as water treatment plant inspections are complicated and responsible work which should not lightly be assigned to junior inspectors. Junior inspectors can certainly work on water treatment plant inspections but they should be doing so with senior inspectors, at least until they have sufficient job experience. The difficulty with using junior staff is not that routine inspections can't be routinely conducted. The difficulty is lacking the experience to recognize or deal with the anomalous or difficult situation.

95. Staff believe that water treatment plant inspections should be thorough, not pro forma. The Renewing the Ministry of the Environment Report contains a chart showing the amount of time an inspection takes (Renewing, paras. 77-78 and 79). "Follow-up action" requires almost as much and sometimes more time than the actual inspection. However, Ministry annual work plans do not specifically include the time required to

follow-up. Time for follow-up is included in each inspector's allocation for general "reactive work", where it has to be juggled into a mix involving the large workload of other and pressing matters. Follow-up in respect of an inspection is arguably the most important portion for purposes of ensuring that anomalous or difficult situations are properly addressed. Follow-up time should be properly budgeted so that inspections are truly thorough.

96. Water treatment plant inspections should involve unannounced inspections to be employed at the discretion of the inspector. Usually, the most productive inspection takes place when the water treatment plant operator is present to answer questions or to provide access to collected data. At smaller facilities, it is often the case that there is no one present unless the inspection is pre-scheduled. For these reasons, unannounced inspections cannot be usefully employed in a routine fashion. Instead, inspectors should have the discretion to do unannounced inspections when following up on specific issues or when they want to "send a message" to a water treatment plant operator about whom there may be doubts.

97. Inspections should also include the taking of samples by the inspector, in order to monitor the sample reporting being done by the municipality. In Renewing the MOE, front-line staff point out that "the accuracy of self-monitoring still requires independent verification" (Renewing, para 124). This would facilitate the detection of water treatment plant operators who are falsifying results but, more likely, would act as a check of the operator's sampling protocols and accuracy. However, there is no protocol governing the independent sample auditing of municipal plants, nor is it clear that sampling equipment is available to inspectors. Both need to be developed.

Recommendation #18:

- That municipal water treatment plant inspections be conducted permanently on an annual basis;
- That they not be conducted by junior environmental officers without adequate mentoring;
- That water treatment plant inspections not be pro forma, but be thorough and also involve the following aspects:
 - Use of unannounced inspections at the discretion of the inspector;
 - Sample auditing, to be done according to a protocol to be developed.

Recommendation #19: Revisiting Regulation 459/00

98. Ministry of the Environment staff point out that the Drinking Water Protection Regulation 459/00 was conceived in some haste and without consulting experienced front-line staff (Renewing, para. 145). Rather than being developed by the Ministry through a measured policy development process, it arose out of an understandable desire to be seen to be acting relatively severely to control a situation which was a political liability. Regulation 459/00 does appear to require some testing that is not responsive to any reasonably anticipated risk and may involve unnecessary work and expense for municipalities. Although it is important to monitor new and emergent threats, it is also important to ensure that unnecessary burdens are not placed on already quite taxed municipalities.

99. A specific suggestion proffered by Ministry of Environment front-line staff is that the Regulation include a requirement for the testing of source samples, thereby adding a considerable source of data to the groundwater and surface water inventory in any given regional area. Further suggestions for the fine-tuning of Regulation 459/00 were discussed at the Expert Meeting, May 22, at page 12. The Delcan issue paper contains a good discussion of additional changes that could be made to the Regulation in order to permit better monitoring of municipal water treatment systems in all their variations (Delcan, Production and Distribution of Drinking Water, Part III, pages 172-174: “The Ontario Drinking Water Standards”).

100. Regulation 459/00 improvement is a function to be performed by the new Water Branch. This revision should be done in close consultation with the public including municipalities.

Recommendation #19:

- That Regulation 459/00 be re-visited to ensure that it addresses anticipated risks and does not involve unnecessary testing, work and expense for municipalities;
- That the Regulation include a requirement for testing source samples, and that those be forwarded to the Ministry of the Environment for analysis.

Recommendation 20: An Effective Spills Action Centre

101. The first line response to emergency drinking water threats is the Spills Action Centre. Ministry policy should ensure there is no delay in responding. Any dispatched officer must have a sufficient degree of experience to deal effectively with the unpredictable and often quite challenging circumstances that arise at the time of a spill.

Recommendation #20:

- That spill response procedures be revised to ensure that a trained MOE officer is quickly dispatched to the scene of a spill.

Recommendation #21: Adequate Human Resources

102. In Renewing the Ministry of the Environment, MOE staff speak powerfully about “their number one challenge” which is “an overwhelming workload” (Renewing, para 66-67, 71- 73-75). The consequences of overwork are well known to all of us. Morale drops. Non-urgent, but important tasks do not get attended to. Work becomes reactive, rather than proactive. Urgent tasks are not done well. As the staff put it in Renewing the MOE, “working short-staffed, OPSEU members feel pressured to rush their work” (Renewing, para 73).

103. An example of the corrosive effect of overwork can be seen in the events of Walkerton. John Earl testified that if he had had more time then he might have been in a better position to figure out the difficulties with the Walkerton water treatment plant (John Earl, Inquiry Testimony, October 31, page 70). Proactive attention to a complicated non-urgent task takes time and a manageable workload.

104. There is really no question that the effect of the 1996/97 cuts left the Ministry without the proper resources to adequately fulfill its mandate. The delivery strategies approach constitutes bureaucratic acknowledgment of that. Senior officials of the Ministry of the Environment agreed that their resources do not match program delivery needs. The “delivery strategies” were put into place to assist with making choices where there were not enough people to fully carry out the Ministry’s mandate (Shaw, Inquiry Testimony, April 19, pages 168-171).

105. Comments to the same effect are contained in the observations of those who deal most extensively with the Ministry on water issues, namely the municipalities. Their observations are well summarized in d’Ombrain, Machinery at paras. 247-254 and paras. 332-334. Such comments were echoed at the Expert Hearings (Expert Hearing Notes, May 22, pages 7 and 8).

106. A certain numerical “critical mass” of staff is needed to perform functions. When that critical mass is present, then temporary short staffing can be dealt with by people filling in, and doubling up. Informal networks make it possible to cope with emergencies. When critical mass is absent, there simply aren’t enough bodies to cope properly with challenges (Renewing, para 106). The Ministry of the Environment has lost its numerical “critical mass”.

107. The response of the MOE staff is an uncomplicated one. “The Ministry needs the proper staff to do the job”. Protecting the environment takes time and money, and the staffing budget must be increased (OPSEU, Renewing, paras 87-88).

108. The response relates not only to abatement and technical staff, but also to administrative staff. Administrative support staff perform the crucial function of dealing with all of the administrative and clerical work of the Ministry and allow professional and technical staff to spend more time protecting Ontario’s environment (Renewing, para 89).

109. Of particular concern is the paucity of scientific and technical expertise in the Ministry. The downsizing in 1996-97 was conducted in a way designed to protect front-line staff. However, those front-line staff, and indeed the entire functioning of the Ministry, relies on “science for compliance”. The environment is complex, technically difficult both to understand and to protect. The Ministry needs to be able to be a leader in research and development, a central clearing house of scientific and technological advancement and a protector of the public against new and emergent threats. The importance of that function for source protection and drinking water treatment has been noted externally (Conservation Ontario, The Importance of Watershed Management in Protecting Ontario’s Drinking Water Supplies, page 44; Russ Calow, Lakefield Research, Peterborough Town Hall, pages 24-25).

110. The cuts in 1996 and 1997 were carefully carried out to maintain a thread-bare technical expertise in each area. However, expertise is not just a quality issue. Expertise has to be available in sufficient quantity to take on challenges and to do so in a proactive and sophisticated rather than reactive way. As the “Briefing Note – Extent of MOEE Budget Reductions since 1995-1996” put it:

It is difficult to find a direct mapping of the budget reductions to impacts on the environment. While none of the businesses and functions used to manage the environment (monitoring, research, assessment, etc.) have been eliminated, all have experienced diminished capacity and reshaping. In general terms, this translates into:

- Reduced capacity to monitor air and water issues;
- Reduced scientific and research capacity to support standards development and direction setting;

(Inquiry Document, Dicerni, Volume 6, Tab 2, p. 2)

111. Current policies allot roughly the same number of different kinds of staff to each region, no matter what the specific characteristics of the regional ecosystem (Renewing, para. 72). There needs to be regional tailoring in staffing assignments.

112. Finally, it is important that the staffing be permanent, to the extent possible. Not only must there be a numerical “critical mass”, there must be a “critical mass” of permanence. A Strong Foundation concludes:

A professional public service does not need to imply lifetime employment but it does imply, for the majority of public servants, a sufficiently long apprenticeship to acquire the skills and culture of professionalism and it does imply the concept of critical mass.

...we do not think the values of public service are likely to endure in a vigorous spirit unless there is a sufficient proportion of public servants (certainly the majority) who have spent significant time acquiring the skills, knowledge, reflexes and standards of public service – who are, in short, professionals. (A Strong Foundation, p. 23)

As stated in Kenneth Kernaghan and David Siegal, “Power, Politics and Bureaucracy” in The Canadian Political Tradition: Basic Readings, page 465:

Security of tenure enables the career public servant not only to establish and wield influence in the policy process, but also to continue to exercise such influence even if there is a change in the governing party. Long tenure in office enables public servants to acquire knowledge and experience, both in specific policy fields and in the political-administrative system within which policy decisions are made.

113. The current government has shown a disturbing trend towards an increase in temporary or contract employees. The total OPS bargaining unit is about 45,000, based on Management Board Secretariat information to OPSEU for purposes of dues deduction, including about 25% or 11,000 unclassified workers. One out of 4 public servants is a contract worker. This is far too high a percentage and the government should be moving towards less, not more contract workers.

114. The government appears to be ready to do exactly the opposite, as evidenced by the recently passed amendments to the Public Service Act.

115. The Public Service Act had been designed to structure government employment in a way that upholds public service values (See Hansard, October 29, 1947, pages 1090-1092 for Mr. Michener’s comments on the Public Service Act, 1947). There was seen to be value in security of tenure, so the Act established that there were to be only two kinds of public servants:

- civil servants, those members of the permanent service; and
- public servants on short term contracts which were limited by statute to a one year on the first contract (and possibly renewable). (Public Service Act, R.S.O. 1990, c. P.47, ss. 7 and 8).

The intention was to ensure short term contracts were used sparingly and that decisions were made reasonably quickly about whether to offer permanent employment to particular employees.

116. The recent amendments now permit initial contracts to contain appointments of up to three years (Bill 25, s. 3). There is also a new feature

of public service employment, the “term classified” service (Bill 25, s. 2), whereunder individual employees can be hired with all the rights of permanent employment, save and except they are on term contracts. These changes facilitate increased use of non-permanent staff.

117. In its “overview” of these changes to the Public Service Act, Management Board Secretariat has indicated its intention that these new terms of employment be used for “exceptional circumstances” and/or “time limited project work” (Management Board Secretariat, An Overview of Changes to the Public Service Act, July 5, 2001, pages 7-8).

118. The rebuilding of the Ministry of the Environment is not “an exceptional circumstance” or “time limited project”. The rebuilding of the Ministry of the Environment requires permanent ongoing staffing so that the hired individuals can develop both the technical expertise and experience and the public service values required to build up the Ministry in the public interest. The Ministry of the Environment must rebuild its full numerical and professional “critical mass”, and, to do so, new staffing should be, to the greatest extent possible, permanent staffing.

119. In a newspaper interview given June 27, 2001, Environment Minister Elizabeth Witmer said “we are certainly going to have to make sure that there are not only additional financial resources, but additional human resources....each year we are going to have to look at what are the needs.....obviously the recommendations coming out of Walkerton are going to have an influence on what more needs to be done”. (Toronto Star, June 28, 2001, A21).

120. Early indications are not promising. The only two significant hirings have been for the water treatment plant inspectors and the SWAT teams. Water treatment plant inspections have all been hired on 18 month contracts. SWAT team hirings are all for similar contractual periods. There has been little permanent hiring by the Ministry since 1996/97 and certainly no hiring which has been for the general purpose of re-establishing the Ministry’s critical mass.

Recommendation #21:

- **That the Ministry of Environment hire sufficient staff to fulfill its mandate to ensure safe drinking water and protect drinking water sources;**

- That the Operations Division of the Ministry of the Environment be staffed on the basis of an “adequate resources for program delivery” model, whereby the full staffing complement required to properly fulfill the relevant programs and responsibilities of the Ministry would be determined, then that staffing budgeted;
- That in respect of technical support (the labs being the subject of later recommendations) there be a reconstruction of the Ministry’s capability to provide timely and sound scientific information, and technical application of same, to Abatement and Enforcement Staff and to concerned parties outside the Ministry;
- That increased administrative support resources be supplied so that Abatement and Enforcement staff can spend more time on field work and less on administrative functions;
- That the annual staffing budget be provided for comment within the Ministry, and externally, and that the staffing budget be included in the Ministry’s annual business plan;
- That the time allocation for programs include recognition of the time needed to follow up and resolve environmental concerns.
- That the staffing not be done on the basis of a standardized formula for all regions, but on the basis of an assessment of the needs of each region’s ecosystem;
- That the Ministry be staffed as much as possible by permanent and not contract staff.

Recommendation #22: Reverse the Cuts of 1996 and 1997

121. OPSEU appreciates that the taxpayers of the province are not prepared to sign a “blank cheque” with respect to staffing levels in the public service. MOE staff members understand that there will always be more work to be done to protect the environment and that the optimal level of staffing may never be attainable. It is for this reason that OPSEU has recommended that there be a staffing according to programs analysis. There should be a prudent assessment of the levels of servicing needed to supply the current programs and staffing should be placed at that level.

122. As a check on this process, and in order to establish a “bright line” staffing goal, OPSEU recommends essentially reversing the cuts of 1996 and 1997. With the exception of one quote in which one Minister said that the cuts were of “a lot of fat” (Norm Sterling, Toronto Star, April 28, 2001, A4), no other internal or external commentator has said that extraneous or unnecessary programs or staff were cut in 1996 and 1997. The most that has been claimed is that the cuts produced “managable” risks. Whether this view was defensible will be the subject of argument in part 1B. In this Part

II submission, OPSEU makes the point that even if cuts produce only “manageable” risks in the short term, they may still be bad for drinking water safety in the medium and long term. None of the information from the Ministry shows a determination that the staffing level reductions in 1996 and 1997 were appropriate or that they were without consequence. All of the discussion reports indicates that there was significant capacity lost, including the loss of important expertise, institutional memory, and networks (Shaw, Inquiry Testimony, April 23, page 166).

123. While there were reductions in 1995, they did not have the effect of removing the Ministry’s critical mass. It was the 1996 and 1997 cuts which were the “watershed” (Expert Meeting, May 22, page 19), having a devastating effect on the Ministry’s ability to function properly.

Recommendation #22:

- That, at a minimum, the budget and staff cuts to the Ministry of the Environment in 1996 and 1997 be reversed.

Recommendation #23: Increased Recruitment and Retention

124. Ministry staff observe it is hard to attract talented people into the Ministry of Environment and harder to hold them (Renewal, para. 100). As one employee put, it “good people won’t come into the Ministry or they leave early, fed up and frustrated” (Renewal, para. 100). This is a crucial problem when talent, education, experience and technical knowledge are so needed for the adequate performance of the functions in question.

125. Ministry Human Resources staff agree: “The MOE will continue to have a strong reliance on science to manage its environmental agenda and over the next several years, certain science-based positions will continue to present challenges in attracting, developing and retaining appropriate staff. Special efforts must be made to initially recruit, then to develop and retain individuals in designated science positions. MOE’s ability to address this issue effectively will also be diminished when considering such gaps as the potential wage differentials between government, other public service institutions and the private sector and the hesitancy for graduates to pursue public service careers.” (Inquiry Documents, Gildner Documents, tab 30, “Ministry of the Environment Human Resources Business Plan and Learning Plan, 2000-2001, page 13.)

126. Recruitment and retention is a general difficulty in the Ontario Public Service. Management Board Secretariat has acknowledged the difficulty in making the public service into an attractive career. “There are also challenges in recruiting recent graduates as, for many, the public service is not seen as employer of choice.” (Inquiry Documents, Gildner, *ibid*, page 14). It has much less attractiveness to young people than it had before and compensation rates are increasingly uncompetitive. Regardless of whether it is a general problem, it is a problem in the Ministry of the Environment and it has a detrimental effect on producing the machinery of government needed to ensure safe drinking water.

127. There has been testimony at the Inquiry that “Factor 80”—an early pension option for persons with a combined age and years of service of 80—has been employed by many personnel to leave the Ministry (Shaw, Inquiry Testimony, April 23, pages 147-148). The implication could be that Factor 80 should be done away with. OPSEU and Ministry staff disagree. The loss of an early retirement benefit will not make the public service more attractive to new recruits. Furthermore, the solution to retention difficulties is not to hold people in by denying them early retirement. The solution is to make the workplace a more productive and rewarding place to work.

Recommendation #23:

- That the Ministry of the Environment substantially increase its rate of retention of existing staff and recruitment of additional skilled professionals through positive measures;
- That a recruitment and retention program be developed, with a focus of improving the quality of working life and morale;
- That this program include Human Resources policies and compensation levels designed to ensure such improvement.

Recommendation #24: Training

128. Ministry staff consider training to be one of the minimum requirements for a reinvigorated Ministry of the Environment that can fulfill its role to protect the public interest in a clean and healthy environment and safe drinking water. The second recommendation of OPSEU’s Renewing the Ministry of the Environment, is: “The ministry of the Environment must enhance the knowledge and practical expertise of existing staff and recruit additional skilled professionals.” (OPSEU, Renewing, page 23.)

129. The Ministry's own training policy outlines the ministry's obligations this way: "The ministry has a responsibility to assist employees in broadening their skills and knowledge to make them more confident and capable in the role they play within the organization. In our changing environment, ongoing learning is essential to enable employees to perform new assignments when required, and to take advantage of new opportunities (Inquiry Document, Gildner book, tab 15, "MOE Learning Policy).

130. Ministry staff have outlined the situation facing the Ministry "The Ministry is...currently under a three-fold threat: loss of existing scientific talent and institutional memory through retirement of senior staff, insufficient opportunities for staff to upgrade their skills through training and conferences; and new hires are few and far between and bring in very junior people with limited experience and expertise" (OPSEU, Renewing, page 23).

131. Staff have given this message about the need for training directly to the ministry in past years. An MOE training guidelines document of September 9, 1998, says: "The *Futures Exercise* carried out in 1997 in which a majority of Operations Division staff were consulted identified a need to develop a comprehensive staff training and development plan to address the issues identified above..." (Inquiry Documents, Gildner book, tab 5, "Guideline for Preparing the Operations Division Staff Training and Development Plan – September 9, 1998", page 3.)

132. Budget cuts have caused a decline in training in the ministry for some years. A 1994-95 overview of training said: "The number of technical training days has decreased substantially. The total number of training days per year has decreased by approximately 35 per cent since 1990. This is due to the presentation of technical training being limited to Toronto and travel budgets being restricted. ...The decrease in technical training is also due to the reduced number of staff attending conferences due to budget constraints. It is critical that staff continue to attend conferences, they are an important learning vehicle for the staff of the ministry." (Inquiry Documents, Gildner book, tab 16, "MOEE Learning Plan", page 3.)

133. Inquiry testimony has shown that budget constraints continued to propel a decrease in technical training days through 1996, '97 and '98. The number of technical training days for ministry staff dropped from 1,937 in 1990-91 to 925 in 1999-2000, the year the events in Walkerton happened.

The number of participants who attended the training dropped from 416 in 1990-91 to 277 in 1999-2000. These numbers apply to technical training offered by Human Resources Branch. They do not include training offered by the divisions (Inquiry Documents, Gildner book, tab 17, “Technical Training Summary – Ministry of the Environment,” page 2.)

134. The evidence from the environmental officers from the Owen Sound office shows the inconsistency of training from one employee to another. They had varying levels of training when it came to the inspection of water treatment plants and the Ontario Drinking Water Objectives, ranging from receiving training in the 1970s (Earl, Inquiry Testimony, October 31, page 18) to the 1980s (Zillinger, Inquiry Testimony, November 7, page. 9; Inquiry Documents, Gildner book, tab 18, page 1).

135. There has been testimony that it is the responsibility of the supervisors to make sure that the staff they supervise are adequately trained. (Hutchison, Inquiry Testimony, November 9, pg. 108) The ministry’s learning policy also goes on to say: “Employees have an on-going responsibility to seek input and advice on their learning needs and to develop a training plan that addresses these learning needs. The plan must be reviewed and accepted by both the employee and the supervisor” (Inquiry Documents, Gildner book, tab 15, “MOE Learning Policy”). One of the times employees can talk with their supervisors about their training needs is during their yearly performance appraisals. (Gildner, Inquiry Testimony, April 26, page 99). This process has not produced adequate results.

136. It has been noted that budget cuts were a barrier to providing the training. Even then if the course was offered, often the response would be too low to hold the course. (Bye, Inquiry Testimony, November 13, page 48.) Staff have mentioned is that their workloads don’t permit them to leave their duties to take the training. Being away from the office, when there isn’t the staff to replace them, is not an option. As it is, in several area, district and regional MOE offices, staff are required to back-fill for a number of vacancies. “Management tells me “if I lose you for two weeks so you can take the training, then I have no one to replace you.’ The problem is we get behind in our work. We really just don’t have enough people.” (OPSEU, Renewing, page 26).

137. When the ministry has the will and commitment to train its staff, it does train them.

138. There have been three mandatory courses that all Operations Division staff (including abatement) had to take over the last six years. Staff were trained in Compliance Policy in Geneva Park in June, 1995 (Gildner, Inquiry Testimony, April 26, page 72), the Delivery Strategies in 1998 (Gildner, Inquiry Testimony, April 26, page 42), and new powers for Provincial Officers contained in Bill 82 in 2000 and 2001 (Gildner, Inquiry Testimony, April 26, page 38).

139. There has been evidence that Investigations and Enforcement Branch took a more formalized approach for staff joining its branch. New hires at IEB receive six weeks of training. Two weeks are taken together, and the next four weeks are taken over the following two years (Gildner, Inquiry Testimony, April 26, page 36). Ministry staff recall that this has been the practice at IEB for at least the past 11 years.

140. It seems that while it has been recognized for a number of years that more comprehensive training was required for IEB, it is only since the events of Walkerton that the MOE has taken a more rigorous approach to training for the rest of the Ministry. Unfortunately, it seems that it has been a relatively select group of staff who have really benefited from this approach – namely new hires and the SWAT Team.

141. Since January 2001, all new abatement and IEB staff must take a three-week course on Environmental Compliance for Provincial Officers. (Gildner, Inquiry Testimony, April 26, page 38.) The MOE course calendar gives an outline of the course. It is “to train new Provincial Officers in the legislation and law enforcement and inspection techniques routinely used in their job” (July 4, 2001 letter from Paul McCulloch, Counsel, Legal Services Branch, MOE, to Megan Park, OPSEU page 4).

142. The twenty-five junior environment officers (EO2s), hired on contract this spring to inspect water treatment plants, received a month of training. In addition to the Environmental Compliance course, they were required to take a three-day course, Drinking Water Treatment for EOs (July 4, 2001, letter from Paul McCulloch, Counsel, Legal Services Branch, MOE, to Megan Park, OPSEU).

143. The ministry’s SWAT (Soil, Water and Air Team), formed earlier this year with a staff of about 39 abatement officers and investigators, widely

perceived by other ministry staff as getting the best training and equipment, have also received a little over a month in training. They attended the three-week Environmental Compliance course and two courses in health and safety (July 4, 2001, letter from Paul McCulloch, Counsel, Legal Services Branch, MOE, to Megan Park, OPSEU).

144. The ministry's own documents show that the massive budget cuts and the subsequent loss of highly skilled and experienced staff have precipitated a strong need in the ministry to develop a truly comprehensive training program:

“The reductions in staffing and operating budgets in Operations Division and the Ministry since the mid-1990s have been part of the impetus for the preparation of a comprehensive Staff Training and Development Plan for the division. Issues pertaining to these reductions which the plan can assist in addressing include:

- the loss of a number of highly skilled staff who had generally been appointed to the OPS since the late 1980's;
- the loss of a significant number of skilled and experienced staff often as a result of early retirement incentives;
- the inability to effectively reinvigorate the Ministry and replace lost expertise due to hiring constraints;
- the loss of experienced staff, often with a very high level of technical expertise to outside employers;
- and changes in approach to program delivery”.

(Inquiry Documents, Gildner book, tab 5, “Guideline for Preparing the Operations Division Staff Training and Development Plan – September 9, 1998”, page 2).

145. It is not clear from the evidence whether such a comprehensive training and development plan has been developed by Operations Division. If it has been, it certainly hasn't been experienced by the staff that OPSEU represents.

146. Dealing specifically with training about water treatment plants, courses on this topic have existed for some time. Prior to 1996, the water treatment courses available to Environmental Officers were two courses designed for operators of water treatment plants. They were Basic Water

Treatment and Surface Water Treatment. (Gildner, Inquiry Testimony, April 26, page 25.) By 1996, the ministry had developed a course that was geared to the kind of knowledge Environmental Officers needed to have of the water treatment process. It was recognized that they weren't going to operate the plant, but they needed to have a general knowledge of how it worked (Gildner, ibid, page 26). The 1996 course was called Drinking Water Treatment for Environmental Officers. It touched on such topics as bacteriology, disinfection, the role of the Medical Officer of Health, filtration, coagulation, flocculation and other treatment methods and included an on-site tour of the facility, followed by a talk on inspection techniques (ibid). The course was last offered in 1997. It seems that there wasn't enough enrollment to keep it going (ibid, page 27). It appears that the ministry revived the course after Walkerton. The course was offered twice this spring (ibid).

147. According to the current MOE course calendar, Drinking Water Treatment for EOs "will provide participants with an introduction to inspection Drinking Water Treatment Plants. The course will utilize a variety of teaching methods to improve participant knowledge of: treatment processes, inspection methods and forms, sampling techniques, the communal water program, ground and surface water characteristics, and record keeping".

148. Every Environmental Officer who is required to inspect a water treatment plant should receive compulsory training on water works. This training must be expanded to ensure it fully equips staff to perform their role of ensuring improved compliance by water treatment plant operators. The training should give them a working knowledge of the treatment process so they can identify indicators of poor operation and potentially unsafe water quality. The training should give Environmental Officers an understanding of disinfection techniques and requirements so they know where to look for problems, so they can understand the problems and how to fix them. The course should train EOs on emerging threats to drinking water. The training should include a section on record-keeping so they can recognize where aspects of the plant's record-keeping falls short. The course should also give EOs a complete understanding of Regulation 459/00. This compulsory training should be offered in locations across the province.

149. Staff also note that there are no "refresher courses" for senior Environmental Officers. They require training that recognizes and builds on

their many years of experience. They require updated training on current methods.

150. The training should not simply be offered on a one-time basis. Staff feel strongly that they should receive updated training as new technologies come on stream and legislation changes.

151. The need for updated training also applies to other areas of environmental protection. Staff would like to receive regularly updated training on developments in case law and legislative changes. As the situation is currently, staff receive a notification of a legislative change by e-mail, with staff required to digest on their own a 40-page regulation change. Staff have noted they find it difficult to keep up on all the changes.

152. In terms of other training needs, the ministry should also make it possible for staff to access seminars, university courses and industry conferences so they can keep up to date on the new and emerging technical and scientific issues relevant to their field.

153. In addition to advanced training, staff emphasize the need to create and improve the mechanisms within the ministry to increase access to internal scientific and technical specialists. Staff would also like more opportunities to share information among one other.

154. Staff believe more ministry-wide and regional conferences would be helpful. They want the opportunity to share information with colleagues who do the same job as them, and with other colleagues who have related expertise. For example, the Ministry could host a conference of IEB staff, but then joint conferences with IEB and abatement staff whose jobs are interrelated.

155. Ministry employees receive formal training through two avenues in the ministry: the Human Resources Branch and their Division. In the case of Operations Division, the Assistant Director's office in each of the regions determines training needs and offers the divisional training (Gildner, Inquiry Testimony, April 26, page 15). The training budget and focus of both must be increased.

Recommendation #24:

- That the Ministry of the Environment be responsible for enhancing the knowledge, skills and practical expertise of its existing staff and new hires;
- That the Ministry of the Environment develop, in consultation with its staff, a training and development program that focuses on the job needs of its staff;
- That the training be up-to-date, consistent, province-wide, offered on a continuous basis and that time to take the training be allotted;
- That the Ministry's training program have the goal that all new hires and all existing staff in each of the job classifications receive training in the same areas;
- That it reflect the need of staff to have a working knowledge of a range of complex issues, and therefore include a focus on scientific and technical issues, including new technologies and emerging threats to the environment;
- That all relevant abatement staff receive compulsory training in the inspection of water treatment plants so they know the indicators of poor operation and potentially unsafe water quality and how to address those situations pro-actively;
- That long-serving, experienced staff receive training through “refresher” courses that are geared to them, and not to new hires, and which reflect their “on-the-ground experience”;
- That staff be able to access training delivered externally to the Ministry, i.e. courses offered by universities and industry conferences;
- That the Ministry hold its training courses not only in Toronto but throughout the province;
- That the training budgets of the Human Resources branch and the individual divisions of the ministry be increased to reflect the ministry's increased commitment to training;
- That continuous upgrading of knowledge and expertise be a recognized part of staff's ongoing obligations and that time to engage in such activities be budgeted.

Recommendation #25: Passing on the Wisdom

156. It has been noted again and again that the MOE has “remarkably skilled individuals with years and years and years of experience” (Carl Griffiths, Inquiry Testimony, May 15, page 174). The need for succession planning is made particularly clear by statistics relating to the age of Ministry of Environment staff.

Less than three per cent of Ministry staff is under thirty years of age. More than 65 per cent is over 40 years old, and more than a full quarter of the staff is over fifty years old. In other words, the Ministry is in a position where significant numbers of its staff will

be retiring within a very few years and with those people will go thousands of person years of accumulated knowledge of Ontario ecosystems, watersheds, and water infrastructure.

The average age of MOE staff is 47. People are retiring who have expertise that is not being replaced. For example, one scientist just retired who could tell by the 'smell' of a sample what the problem was – the kind of expertise that comes only with experience. There are uncompetitive pay scales for senior scientists so the MOE can't attract new people. (Renewal, para 99)

157. Front-line staff report watching senior, knowledgeable people leave without any real attempt to transfer their expertise to someone else. Continuity on projects is lost. Vacancies created by departures remain unfilled for months or years.

158. Senior Ministry staff were fully aware of the need to engage in succession planning, but they have made no real progress. "Succession planning is something we're still struggling with" (Robert Shaw, Inquiry Testimony, April 23, page 181). It is a "struggle" that needs more focussed attention.

Recommendation #25:

- That the Ministry provide for succession planning, mentoring programs and other mechanisms to ensure the transfer of institutional memory and knowledge from long-serving Ministry staff to younger, less expert staff, including a 6 month apprenticeship program.

Recommendation #26: Public Involvement

159. Front-line members of the Ministry of the Environment agree with the recommendations made by the Canadian Environmental Defence Fund and the Canadian Environment Law Association concerning increased public involvement. They only point out that increased public involvement must be facilitated by a public service with the capacity to do so. This in turn requires upholding the other recommendations in these submissions concerning the MOE.

Recommendation #26:

- That the recommendations concerning public involvement as made by the Canadian Environmental Law Association and the Canadian Environmental Defence Fund be adopted;
- That the MOE be resourced to carry out those recommendations.

Recommendation #27: Emergency Planning

160. Emergencies are much better dealt with if there has been advanced emergency planning (Expert Hearing Notes, June 6, section 1.4.1). The process has other advantages. The existence of an emergency plan may increase public trust in the institutions and the services they provide. Furthermore, emergency planning requires the institutions involved to examine their own capacities and review how they would work with each other in an emergency. This will tend to reveal structural weaknesses (and strengths) and help institutions get a better sense of how to work with each other on a daily basis.

161. It would be very useful for emergency planning to occur in respect of each water treatment plant in the province of Ontario. A template for such emergency plans should be developed centrally, and implemented through direct discussion between the individually involved institutions at the local level.

Recommendation #27:

- That the MOE co-ordinate the creation of a mandatory emergency plan in respect of every water treatment plant in the Province of Ontario;
- That there be full involvement of the operator, the Ministry of Health and the public in the formulation of the plan;
- That the plan be tabled with the public.

Recommendation #28: Overall Co-ordinating Role of the Ministry of the Environment

162. The importance of a central responsible Ministry has been much discussed in these submissions. However, front-line staff of the Ministry of the Environment are also fully aware that their Ministry has to work in close conjunction with other entities including other Ministries, health units,

conservation authorities and the public. Perhaps the best analogy is that of a “hub” and “spokes” (Expert Meeting, May 22, 1.1). As documented extensively by the d’Ombrain paper, there is a need for the “hub” and “spokes” to have clear, transparent responsibilities and accountability and to work together in a well co-ordinated fashion. In order to carry forward with that co-ordination it would seem best to build on the starting point of the Drinking Water Co-ordinating Committee as located in the (previously recommended) Water Branch.

163. Assuming, and it is a major assumption, that one is starting with the “inner hub” of a strong Water Branch and an “outer hub” of a fully mandated and resourced Ministry operating pursuant to a drinking water policy approved at the most senior levels, then how would further co-ordination work?

164. The first step in such co-ordination perhaps should be to convene a Senior Consultative Committee. This Committee would be significantly different from the Drinking Water Co-ordinating Committee in that the “stakeholders” would now be present rather than consulted afterward (Jim Mahoney, Inquiry Testimony, May 9, page 253). This Committee of government and “stakeholders” should meet regularly to operationalize the drinking water policy.

165. There would obviously be a need to determine who should serve on the Committee in a representative capacity. For the municipalities, the Association of Municipalities of Ontario would seem to be well suited. There should be representation of both small and large municipalities, as they have quite different interests and concerns with respect to the provision of water. Conservation authorities could be represented through Conservation Ontario. Non-governmental organizations should also be present and organizations like the Canadian Environmental Network may be the means of determining which entities would be entitled to participate actively. The Canadian Environmental Law Association and the Concerned Walkerton Citizens should be present as “watchdogs” during at least the initial phase of operation of this committee.

166. The ongoing responsibilities and accountabilities and inter-relationships of the various entities involved in safe drinking should be clarified in Memoranda of Understanding. Memoranda of Understanding are not uncommonly employed in the province of Ontario to govern the

interrelationship between the provincial government and various agencies. For example, the Ontario Clean Water Agency has a Memorandum of Understanding (in need of extensive revision) between itself and the Ministry of the Environment. OCWA should be a party to the consultative committee. Similar Memoranda of Understanding, whether legislatively required or not, should be put into place and carefully set out the duties and responsibilities of the respective parties.

167. These Memoranda of Understanding should also be tabled with the public. This would be a crucial component of transparency and would permit the public to hold various entities responsible for the responsibilities that they had agreed to undertake.

168. Those responsibilities would have to be translated into regional/watershed settings and also into local and municipal settings concerning water treatment plants. Parallel versions of the Senior Consultative Committee should be struck at all appropriate watershed/regional and municipal settings. Parallel versions of necessary constituencies should be members of those Committees. It would be best if local Memoranda of Understanding were drawn up to establish regional and local clarity with respect to roles and responsibilities. Amongst the topics to be dealt with locally would be source protection and emergency readiness with respect to water treatment plants.

Recommendation #28:

- **That the overall co-ordinating role of the Ministry of the Environment be fulfilled at least in part through a Senior Consultative committee including representatives of:**
 - **Other ministries;**
 - **Municipalities;**
 - **Health Units;**
 - **Conservation Authorities;**
 - **Non-governmental organizations; and**
 - **The public.**
- **That, for at least the initial phase, the public be represented by Concerned Walkerton Citizens;**
- **That the Senior Consultative Committee be convened by the Water Branch of the Ministry of the Environment;**

- **That the Committee operationalize the responsibilities set out in the drinking water policy and arrange co-ordinated implementation through binding Memoranda of Understanding;**
- **That those Memoranda of Understanding be tabled with the public;**
- **That the Water Branch of the Ministry of the Environment arrange regional/watershed co-ordination of source protection, in conjunction with local actors including any Conservation Authority;**
- **That, on a regional/municipal basis, the MOE, Health Unit, and water treatment plant operator arrange emergency readiness concerning water treatment plant deficiencies.**