

January 28, 2019

**BY EMAIL & REGULAR MAIL**

Nathaniel Aguda  
Environmental Policy Branch  
Ministry of Environment, Conservation and Parks  
40 St. Clair Avenue West, 10th floor  
Toronto ON M4V 1M2

Dear Mr. Aguda:

**RE: ENVIRONMENTAL REGISTRY NOTICE 013-4208 – PROPOSED MADE-IN-ONTARIO ENVIRONMENT PLAN**

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On behalf of the Canadian Environmental Law Association (“CELA”), I am writing to provide our comments on *Preserving and Protecting our Environment for Future Generations: A Made-in-Ontario Environment Plan* (“Environment Plan”). These comments are being provided to you in accordance with the above-noted Registry notice.

Please note that this letter sets out CELA’s general comments and overall recommendations regarding the Environment Plan. CELA’s more specific comments and recommendations regarding various Environment Plan chapters are appended to this letter as follows:

Appendix A – CELA’s review of the water-related aspects of the Environment Plan;

Appendix B – CELA’s review of proposed changes in Ontario’s wastewater effluent regulations;

Appendix C – CELA’s review of the climate change aspects of the Environment Plan; and

Appendix D – CELA’s review of environmental assessment and waste-related aspects of the Environment Plan.

For the reasons outlined below, CELA’s overall conclusion is that the Environment Plan is wholly inadequate and contains insufficient detail about numerous proposals contained therein. CELA therefore recommends that the Environment Plan should be immediately revised in order to:

- contain the essential components of sound, transparent and accountable environmental planning;
- become more robust and contain greater prescriptive information in order to help identify and preclude future governmental initiatives that are at odds with the environmental outcomes envisioned by the Environment Plan; and

- provide sufficient particulars in each chapter to explain precisely how and when the proposed provincial actions will be designed, implemented, and funded, and by whom.

## **CELA’S GENERAL COMMENTS ON THE ENVIRONMENT PLAN**

### *(a) Background*

CELA is a non-profit public interest group established in 1970 to use and improve laws to protect the environment and ensure public health and safety. CELA represents low-income individuals and vulnerable communities in the courts and before administrative tribunals on a wide variety of environmental issues, including those discussed in the Environment Plan.

### *(b) The Environment Plan is not a “Plan”*

In CELA’s experience, environmental plans generally require a number of different components to ensure that timely and effective legislative, regulatory and administrative actions are undertaken by public officials. These components include:

- specific and measureable actions, and objectives;
- measureable results;
- clear and reasonable timelines and deadlines;
- accountability mechanisms;
- adequate resourcing for implementation; and
- ongoing and continuous public engagement.<sup>1</sup>

Unfortunately, these key components are not reflected adequately or at all in Ontario’s proposed Environment Plan.

On this point, CELA notes that the Minister’s message (page 3) states that the Environment Plan describes the “actions” that Ontario is “proposing” to take. However, a careful review of the Environment Plan itself reveals that a large number of these so-called “actions” are merely non-committal suggestions of what Ontario might (or might not) undertake at some indefinite point in time.

The following examples are illustrative of CELA’s concern that the bulk of the Environment Plan simply lists options to be considered in due course, rather than describing a prescriptive set of tangible actions that will be implemented by the provincial government:

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<sup>1</sup> See <http://www.cela.ca/publications/great-lakes-protection-act-alliance-comments-canada-ontario-action-plan-lake-erie>.

- Ontario will “consider” how wastewater and stormwater financing “could” be updated (page 15)
- the Carbon Trust “could consider” investing in cost-effective projects in certain sectors (page 27);
- Ontario will “consider” tax policy options to encourage clean technology manufacturing (page 30);
- Ontario will “consult on” tax policy options to make it easier for homeowners to increase energy efficiency (page 33);
- Ontario is “looking at proposed ways” to address waste diversion, manage excess soil and redevelop “brownfield” properties (page 39);
- Ontario will “seek” federal commitments to implement national recyclability standards (page 42);
- Ontario will “explore” additional opportunities to reduce and recycle waste (page 42);
- Ontario will “consider” approaches to the management and spreading of hauled sewage (page 45);
- Ontario will “collaborate” with partners to restore natural ecosystems (page 47);
- Ontario will “look for opportunities” to expand access to provincial parks (page 49);
- Ontario will “review” management of provincial parks and conservation reserves (page 49).

In our view, these and other vague provincial commitments in the Environment Plan to merely “consider”, “consult on”, “review”, “collaborate on”, “update”, “encourage” or “promote” various matters do not guarantee that Ontario will actually undertake appropriate, timely and effective measures in relation to such matters.

In making this submission, CELA acknowledges that certain timeframes, goals and funding commitments are set out in the Environment Plan’s chapter on climate change. However, the efficacy of the proposed measures in this chapter are highly questionable, as outlined in Appendix C below. We further note that funding commitments do not accompany most of the other non-climate change measures suggested in the Environment Plan.

In summary, CELA submits that the Environment Plan is more accurately characterized as a draft proposal or discussion paper, rather than a coherent, consistent and clearly articulated roadmap for implementation purposes.

Given the daunting environmental challenges now facing Ontario, we conclude that a vague and open-ended “plan to make a plan” is simply insufficient to safeguard the public interest. **CELA therefore recommends that the Environment Plan should be immediately revised to contain the essential components of sound, transparent and accountable environmental planning.**

*(c) The Environment Plan Should Preclude Inconsistent Governmental Proposals*

It goes without saying that the Environment Plan is not legally binding or enforceable. In essence, the Environment Plan outlines high-level policy direction on various environmental issues and opportunities in Ontario. However, this general guidance does not necessarily prevent or constrain specific governmental proposals (e.g. statutory amendments) that undermine, or are inconsistent with, the Environment Plan content.

For example, the Environment Plan professes governmental commitment to Great Lakes water quality (pages 12-13), drinking water source protection (pages 13-14), Lake Simcoe water quality (pages 13-14), protection of Greenbelt lands (page 48), avoidance of conflicting land uses (page 48), conservation of wetlands, sensitive natural areas and biodiversity (pages 48-49), and other provincial interests.

However, exactly one week after the Environment Plan was released for public comment, the Ontario government introduced Bill 66 which, among other things, proposed a new “open-for-business planning by-law” power in Schedule 10. Intended to attract major industrial development, this municipal planning tool would be automatically exempted by Schedule 10 from the application of key statutes needed to fulfill the above-noted Environment Plan commitments, such as:

- *Planning Act* (and the Provincial Policy Statement issued thereunder);
- *Great Lakes Protection Act, 2015*;
- *Greenbelt Act, 2005*;
- *Lake Simcoe Protection Act, 2008*;
- *Oak Ridges Moraine Conservation Act, 2001*;
- *Ontario Planning and Development Act, 1994*; and
- *Places to Grow Act, 2005*.<sup>2</sup>

Fortunately, the Ontario government has recently announced that Schedule 10 will be removed from Bill 66 when the Legislature resumes sitting in February 2019. The Minister of Municipal

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<sup>2</sup> See <http://www.cela.ca/stop-bill-66>.

Affairs and Housing has indicated that this move is being undertaken in light of concerns raised by MPPs, municipalities and stakeholders in relation to Schedule 10.

CELA strongly supports the removal of Schedule 10 from Bill 66,<sup>3</sup> but we remain unclear why it was even introduced by the Ontario government in the first place given its fundamental inconsistency with the basic tenets of the Environment Plan.

In our view, the serious disconnect between Bill 66 and the Environment Plan demonstrates the types of intractable problems that arise when provincial commitments in the Environment Plan are couched in ambiguous language, or are expressed as general platitudes about environmental protection and resource conservation. This leaves the door open to varying interpretations as to what is – or is not – permissible under the Environment Plan.

The fact that Schedule 10 of Bill 66 was introduced despite the existence of the Environment Plan suggests to CELA that the vague and highly malleable content of the proposed Environment Plan will not necessarily prevent the future introduction of similarly unacceptable changes to Ontario's environmental law framework.

**CELA therefore recommends that the Environment Plan should be immediately revised to become more robust and contain greater prescriptive information in order to help identify and preclude future governmental initiatives that are at odds with the environmental outcomes envisioned by the Environment Plan.**

*(d) The Environment Plan Lacks Substantive Detail or Urgency*

Even in those rare instances where the Environment Plan contains an express commitment to pursue a particular option or outcome, there is a paucity of detail explaining exactly how and when such commitments will be undertaken, or by whom.

Not surprisingly, for example, the Environment Plan commits to protecting air quality across the province (page 10). However, the enumerated air-related “actions” (including the cryptic statement that Ontario will “improve air quality in communities by creating unique solutions to their individual challenges”) contain no specific information (or timeframes) about how these steps are going to be designed, implemented or funded (page 10).

In addition, given the absence of any quantitative targets for improving ambient air quality in Ontario communities (particularly urban or industrial “hot spots” involving cumulative impacts, or multiple sources, of airborne contaminants), it will be exceedingly difficult for Ontarians to gauge whether any tangible progress is being made in achieving the Environment Plan's commitment regarding air.

Similar concerns arise in relation to the Environment Plan's commitment to protecting drinking water, groundwater and surface water resources (pages 11-12). While this commitment is

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<sup>3</sup> See <https://www.cela.ca/publications/removal-schedule-10-bill-66>.

laudable, CELA submits that the proposed “actions” (pages 13-15) are expressed in overgeneralized terms, and are devoid of any meaningful implementation details or deadlines.

Moreover, the water-related actions themselves do not appear to break any new ground, but appear to be largely limited to “building on” or “continuing” current activities, “reviewing” and “updating” current programs, and “working” with current partners or stakeholders.

Even new (and long-overdue) action to ensure transparency through real-time monitoring/reporting of sewage overflows (page 15) is not accompanied by any explanation as to when and how this will occur in municipalities across Ontario (e.g. statutory requirement? regulatory standard? amendment to Environmental Compliance Approvals? Director’s order? other tools?).

In CELA’s view, there is a similar lack of clarity and specificity in the Environment Plan’s broadly framed ‘actions’ involving significant law reform. For example, the Environment Plan states that Ontario will “streamline and prioritize environmental approvals for businesses that use low-carbon technology (page 33), but offers no details on what the “streamlining” will entail (e.g. more standardized approvals?) and provides no definition of what constitutes “low-carbon technology.”

The Environment Plan further states, without elaboration or explanation, that the provincial government will “update” the Statements of Environmental Values (“SEVs”) under the *Environmental Bill of Rights* (“EBR”) in order to “reflect Ontario’s environment plan” (page 35). In response, CELA submits that it would be more appropriate to amend the Environment Plan itself to more fully reflect applicable SEV principles (e.g. precautionary principle, ecosystem approach, cumulative effects consideration, polluter pays, inter-generational equity, transparency, etc.). In addition, given the dubious content of the Environment Plan, and given the recent (and regressive) changes to the *EBR* as a result of Ontario Bill 57, CELA draws no comfort from the government’s intention to revise SEVs under the *EBR*.

In light of these and other examples, CELA concludes that there is inadequate implementation detail to substantiate the Environment Plan’s claims that it “represents a clean break from the status quo” (page 3), and “presents new direction for addressing the pressing challenges we face to protect our air, land and water” (page 52). Similarly, the general absence of clear targets and firm timeframes regarding the proposed provincial “actions” militates against transparency and accountability in governmental decision-making.

In addition, the Environment Plan’s perplexing failure to specify implementation deadlines suggests to CELA that none of the proposed environmental protection measures are likely to be pursued with any particular urgency by the Ontario government.

**CELA therefore recommends that the Environment Plan should be immediately revised to provide sufficient particulars in each chapter to explain precisely how and when the proposed provincial actions will be designed, implemented and funded, and by whom.**

## **CONCLUSIONS AND GENERAL RECOMMENDATIONS**

For the foregoing reasons, CELA concludes that Ontario's proposed Environment Plan falls considerably short of the mark, and should be substantially overhauled in order to provide clear, effective and accountable provincial direction as Ontarians confront the environmental challenges of the 21<sup>st</sup> century.

In our view, Ontario's Environment Plan should be more than a collection of partisan statements,<sup>4</sup> vague promises, colourful infographics, and glossy photographs. Instead, the Environment Plan should contain sufficient operational detail on precisely how and when the province will meet its various environmental commitments, which need to be recast in more prescriptive terms.

Similarly, the Environment Plan should identify meaningful mechanisms for tracking, evaluating and reporting upon the government's success (or failure) in achieving its commitments and implementing its specified actions.

Accordingly, CELA recommends that:

- 1. The Environment Plan should be immediately revised to contain the essential components of sound, transparent and accountable environmental planning.**
- 2. The Environment Plan should be immediately revised to become more robust and contain greater prescriptive information in order to help identify and preclude future governmental initiatives that are at odds with the environmental outcomes envisioned by the Plan.**
- 3. The Environment Plan should be immediately revised to provide sufficient particulars in each chapter to explain precisely how and when the proposed provincial actions will be designed, implemented, and funded, and by whom.**

We trust that CELA's general comments, and our specific recommendations in the following appendices, will be acted upon as the Ontario government determines its next steps in relation to the Environment Plan.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Richard D. Lindgren

Counsel

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<sup>4</sup> For example, the Plan claims, without any supporting evidence, that "a cap-and-trade program or carbon tax that seeks to punish people for heating their home or driving their cars remain unacceptable to the people of Ontario" (page 3). In fact, of the 11,000 persons who submitted comments to the Ontario government on Bill 4, 99% opposed the repeal of the cap-and-trade program: see <https://eco.on.ca/blog/what-did-ontarians-say-about-cancelling-cap-and-trade/>.

cc. The Hon. Rod Phillips, Minister of Environment, Conservation and Parks  
Dr. Dianne Saxe, Environmental Commissioner of Ontario

**APPENDIX A: ONTARIO FRESHWATER PRIORITIES AND  
THE PROPOSED MADE-IN-ONTARIO ENVIRONMENT PLAN**

**Prepared by  
Anastasia M Lintner, Special Projects Counsel, Healthy Great Lakes**

**Introduction**

In April 2018, Canadian Environmental Law Association (CELA) and several other organizations developed a set of recommended targets, timelines and emphasized the importance of investments for freshwater protection in Ontario ([Ontario Freshwater Priorities Letter](#), attached). CELA has reflected on how the proposed Made-in-Ontario Environment Plan measures up against those freshwater priorities. Below are some general comments, followed by more detailed submissions related to the specific freshwater priorities.

*(a) Targets, timelines, progress*

Overall, the proposed Made-in-Ontario Environment Plan does not include specific targets and timelines.

**Recommendation 1: CELA recommends that the government ensure that the Made-in-Ontario Environment Plan is a living document, that is regularly reviewed and improved, particularly by making all of the commitments “actionable”, with targets, timelines, indicators (of success/progress).**

The proposed Made-in-Ontario Environment Plan commits to “reporting regularly” and “developing key indicators of progress”, as well as “reviewing the environment plan every four years.” (p53)

**Recommendation 2: CELA strongly recommends that the progress indicators are developed immediately (eg, within the next few weeks/months). Too often, the measures of success are left until far into an initiative, making it challenging for the public to understand what the policy is (or policies are) seeking to achieve.**

**Recommendation 3: CELA recommends that the government provide clarity about what frequency can be expected for the reporting.** Will there be reporting monthly, as the priority and other initiatives are fleshed out? Will there be an annual report on the entire Made-in-Ontario Environment Plan?

(b) Freshwater policy review

The proposed Made-in-Ontario Environment Plan commits to “[t]horoughly review the province’s water taking policies, programs and science tools to ensure that vital water resources are adequately protected and sustainably used.” (p14)

Further, the proposed Made-in-Ontario Environment Plan commits to “[e]nhance how we manage water takings to ensure we have sustainable water resources in the face of a changing climate and continued population growth. We will do this by examining approaches to assessing and managing multiple water takings, establishing priorities for different water uses, and preparing and responding to drought conditions.” (p14)

**Recommendation 4: CELA recommends that emphasis be put on improved stormwater management, investment in green infrastructure, prioritizing ecosystem and human needs within the water taking program, and significantly improving the Ontario Low Water Response policy.**

CELA staff are working with the Ministry of the Environment, Conservation and Parks (MECP) on the on-going groundwater review and appreciate the extension of the bottled water moratorium to allow time to complete this important work. CELA continues to be willing to assist with any other aspects of the review of water policies.

(c) Conservation, efficiency, climate resilience

Freshwater priority: “Ensuring all municipalities achieve tree canopy targets by 2030” (Ontario Freshwater Priorities letter)

Freshwater priority: “Dedicating 15% of infrastructure funds to implementing living green infrastructure” (Ontario Freshwater Priorities letter)

Freshwater priority: “Assessing the extent of flood vulnerabilities through watershed and shoreline studies” (Ontario Freshwater Priorities letter)

The proposed Made-in-Ontario Environment Plan makes commitments regarding conservation and efficiency, including promoting conservation, tracking water use, and improving efficiency standards (p15). As well, there is a commitment to updating municipal wastewater and stormwater policies (p15).

Conservation, efficiency and climate resilience are interrelated and extremely important to Ontario. As discussed in [The Water-Energy Nexus: Linking Water and Energy Policy in Ontario](#) (2010), there are significant energy inputs into treating, distributing and wasting municipal water. Among other things, the government can make energy and water conservation and efficiency improvements in the Ontario Building Code, as well as seeking to better understand current flood vulnerabilities.

**Recommendation 5: CELA recommends careful consideration of the potential to address climate change through water conservation and green infrastructure policies.**

As well, there has been a significant amount of investment made toward establishing runoff volume control targets and low impact development stormwater management guidance. These targets and guidance are crucially important in a changing climate, where intense storms and flooding are more prevalent. Seeking to ensure that developments mirror natural hydrologic cycles are important for improving water quality, and contributing to goals set out in Ontario's Great Lakes Strategy, the Lake Simcoe Protection Plan, and the Domestic Action Plan for Lake Erie.

**Recommendation 6: CELA recommends that Ontario move ahead to establish runoff volume control targets and implement low impact development stormwater management.**

*(d) Avoid unintended consequences of red tape reduction*

The speed with which the government is implementing the Open For Business Action Plan, may not allow for careful consideration of unintended consequences. The proposed Made-in-Ontario Environment Plan includes recognition of importance of a healthy Great Lakes – St Lawrence River ecosystem to the prosperity of Ontario. Yet, Schedules 5 and 10 of Bill 66, the proposed Restoring Ontario's Competitiveness Act, 2018 do not reflect this goal of a healthy ecosystem to support a prosperous economy. To the contrary, the “red tape reduction” bills suggest jobs are more important (or are to be traded off with) environmental protections, particularly for drinking water sources. Though the Minister of Municipal Affairs and Housing has indicated that the proposed “open-for-business planning by-law” (Schedule 10, Bill 66) will not be pursued at this time, CELA is gravely concerned that the Ontario government is not putting sufficient emphasis on ensuring a healthy ecosystem.

**Recommendation 7: CELA recommends that the government ensure that the pursuit of red tape reduction is not at odds with proposed commitments in the Made-in-Ontario Environment Plan.**

(e) Drinking Water

Freshwater Priority: “Eliminating all long-standing boil water advisories and persistent drinking water quality violations and ensuring drinking water source protection for all Ontarians by 2022.” (Ontario Freshwater Priorities letter)

There is no mention of the numerous boil water advisories in the proposed Made-in-Ontario Action Plan. According to [watertoday.ca](http://watertoday.ca), there are 110 drinking water advisories in Ontario (on January 27, 2019). Some have been in place for years, including Neskantaga First Nation (since February 1, 1995) and Shoal Lake No. 40 First Nation (since February 18, 1997).

Addressing drinking water quality issues, as stressed in the recommendations from the Walkerton Inquiry, requires a multi-barrier approach. Ontario’s legal regime for drinking water protection is admired in other jurisdictions. Yet, there are significant issues that remain to be addressed, particularly for vulnerable populations. Two years ago, CELA submitted to the government reasons to Enhance Protection of Drinking Water Quality in Ontario. CELA emphasized the important of extending drinking water source protection planning to all Ontarians. In this regard, CELA is particularly concerned that Ontario’s Open For Business Action Plan and specifically Schedule 10 of Bill 66 threaten the full implementation of the *Clean Water Act, 2006*. Although the Minister of Municipal Affairs and Housing has indicated that ,in response to concerns raised by Members of Provincial Parliament, municipalities and other organizations, the proposed “open-for-business planning by-law” will not be pursued at this time, CELA strongly urges the government to ensure commitments to drinking water protection are prioritized.

**Recommendation 8: CELA recommends that clear targets, milestones, timelines and investment commitments be made to ensure clean, safe drinking water for all Ontarians.**

(f) Reducing Nutrients

Freshwater priority: “Reaffirming the target of a 40% reduction in total and dissolved reactive phosphorus in Lake Erie by 2025; with an interim goal of 20% by 2020.” (Ontario Freshwater Priorities letter)

Freshwater priority: “Supporting implementation of agricultural best management practices to manage the impacts of nutrients on water quality” (Ontario Freshwater Priorities letter)

Freshwater priority: “Preventing nuisance algae by reducing overall emissions of nutrient pollutants to water from Ontario industries and municipalities as reported to the National Pollutant Release Inventory (NPRI) by 40% by 2028 compared to the 2015 reporting year.” (Ontario Freshwater Priorities letter)

The proposed Made-in-Ontario Environment Plan mentions that it will address harmful nutrient pollution by continuing current partnerships, including those related to “...the Canada-Ontario Great Lakes Agreement (COA) and the Canada-Ontario Lake Erie Action Plan” (p12) and Lake of the Woods (p13).

**Recommendation 9: CELA recommends that there be additional commitments (beyond existing) that focus on preventing harmful algal blooms throughout Ontario.**

*(g) Sewage*

Freshwater priority: “Ensuring real-time, public notification of sewage spills, including combined sewage overflow (CSO) events, in all municipalities, and eliminating the release of inadequately or untreated sewage by 2022.” (Ontario Freshwater Priorities letter)

The proposed Made-in-Ontario Environment Plan indicates that real-time monitoring of sewage overflows is something that the government will “work with municipalities” on (p15).

**Recommendation 10: CELA recommends that a clear action plan be developed which will transition all municipalities to providing real-time reporting within a specified timeline.**

*(h) Review of Ontario’s Great Lakes Strategy*

The proposed Made-in-Ontario Environment Plan commits to “[r]eview and update Ontario’s Great Lakes Strategy to continue to protect fish, parks, beaches, coastal wetlands and water by reducing plastic litter, excess algae and contaminants along our shorelines, and reducing salt entering waterways to protect our aquatic ecosystems.” (p12)

When reviewing and updating Ontario’s Great Lakes Strategy, there will need to be a timely assessment of the progress achieved to date. It is hoped that the government will continue to seek to (as the proposed Made-in-Ontario Environment Plan does) work cross-ministerially and in an integrated way during the review. Further, it is expected that Ontario’s Great Lakes Strategy will contain guiding principles, clear targets, and measurable progress indicators.

**Recommendation 11: CELA recommends that the government ensure publicly available progress report is released well in advance of consultations on the Strategy, to allow consideration of what’s been achieved and what’s been neglected.**

**Recommendation 12: CELA recommends that the government ensure the Strategy contains principles to guide all government decision-making related to the region, measurable targets, and progress indicators.**

*(i) Biodiversity and wetlands*

Freshwater priority: “Protecting 17% of Ontario’s lands and fresh waters by 2020, in accordance with Canada’s commitment under the Convention on Biological Diversity.” (Ontario Freshwater Priorities letter)

Freshwater priority: “Protecting and restoring wetlands to move us toward reversing wetland loss by 2022, by making provincially significant wetlands, Hudson Bay Lowlands, Great Lakes coastal wetlands (and other wetland types of high ecological value) strictly off limits to development, and by committing to stronger programs to scale up wetland restoration.” (Ontario Freshwater Priorities letter)

The proposed Made-in-Ontario Environment Plan makes several commitments intended to “improve the resilience of natural systems” and “conserve and restore natural ecosystems such as wetlands, and ensure that climate change impacts are considered when developing plans for their protection” (p47). As well, the Made-in-Ontario Environment Plan commits to “[r]eview management of provincial parks and conservation reserves to ensure effectiveness by exploring internationally recognized tools and best practices.” (p49) There is no need to start from scratch here, as there are many existing strategies and willing partners to consult. For example, Ontario’s development of a [wetland conservation strategy](#) in 2017.

**Recommendation 13: CELA recommends that the government set out a plan, with clear targets and timelines, for achieving natural systems protection and restoration.**

*(j) Road salts*

Freshwater priority: “Reviewing, integrating, and managing substances that are harmful to aquatic life, including chloride pollution from the application of road salts.” (Ontario Freshwater Priorities letter)

The proposed Made-in-Ontario Environment Plan makes the following commitment: “Build on the ministry’s monitoring and drinking water source protection activities to ensure that

environmental impacts from road salt use are minimized. Work with municipalities, conservation authorities, the private sector and other partners to promote best management practices, certification and road salt alternatives.” (p13)

CELA endorses WWF-Canada’s submission on the road salts aspects of the proposed Made-in-Ontario Environment Plan, which includes the following three recommendations (p1-2):

1. Establishing a Provincial Water Quality Objective (PWQO) to help identify and address the specific environmental needs of Ontario’s aquatic species at risk that more susceptible to chloride levels recommended by the Canadian Council of Ministers for the Environment (CCME) and place Ontario as the environmental stewards of Canada’s Great Lakes.
2. Regulating road salt application, including implementing a training, certification and reporting program for medium to large-scale road salt applicators. Completion of certification in approved application techniques and technologies should be a minimum for an industry applying a known environmental toxic substance at medium to large-scale.
3. Developing liability benefits in the province of Ontario for public and private holders of an audited training and certification in which proper winter conditions, snow and ice removal techniques, and substance quantities are tracked and recorded as evidence for maintaining public safety and environmental health.

One aspect of liability that may not be top of mind is a potential claim of nuisance for damages from excessive road salt use. In [\*Schenck v Ontario \(1982\) 34 OR \(2d\) 595 \(Ont SC\)\*](#), which was upheld on appeal to the Ontario Court of Appeal, the Crown was liable for road salt damage caused to a farmer’s peach orchard by the provincial highway department. CELA recommends that this potential liability be taken into consideration when making policy decisions regarding road salt use.

**Recommendation 14: CELA recommends that the government take specific actions that are aimed at significantly reducing the use of road salts, including setting a Provincial Water Quality Objective for chlorides that reflects the heightened threats in Ontario, regulating road salt use, and addressing liability concerns.**

(k) Toxics

Freshwater priority: “Reducing overall emissions of carcinogens and other toxic (persistent, bioaccumulative, and endocrine disrupting) chemicals in industrial and municipal wastewaters as reported to the National Pollutant Release Inventory (NPRI) by 25% by 2022 compared to the

2015 reporting year, with a plan to move to virtual elimination of such emissions by 2030”  
(Ontario Freshwater Priorities Letter)

CELA is deeply concerned that the government is not doing enough to ensure that particularly harmful pollution is prevented and that emissions are reduced dramatically. Schedule 5 of Bill 66 proposes to repeal the *Toxics Reduction Act, 2009* (TRA). This is inconsistent with the Made-in-Ontario Environment Plan commitment to “... hold polluters accountable by ensuring strong enforcement with real consequences and penalties, especially for repeat offenders.” (p7) In [our submissions regarding Bill 66](#), CELA recommended that:

1. MECP not repeal the TRA;
2. MECP not revoke the regulations or eliminate any of the planning and reporting requirements of the TRA, including the requirement on industry to prepare toxics reduction plans;
3. MECP proclaim in force sections 11, 15.1, 20.1, 26.1, 30, 38, and 50(1)(o.1)(o.2) of the Act;
4. MECP list under the TRA as substances of concern the 135 substances identified in the 2008 Discussion Paper if they are still present in commerce and the environment in Ontario; and
5. Pursuant to the authority under s. 50(1)(d) of the Act, MECP set targets relating to toxic substances under O. Reg. 455/09.

The TRA focuses on preventing (not abatement) of toxic pollution. As such, it is not duplicative of other regulations in Ontario. Further, the TRA is modeled on the [Massachusetts Toxics Use Reduction Act, Mass. Gen. L. ch. 21I](#), not the *Canadian Environmental Protection Act, 1999* and is not duplicative of federal policy efforts.

**Recommendation 15: CELA recommends that the Schedule 5 of Bill 66 be eliminated.**

**Recommendation 16: CELA recommends that the government set out a plan, with clear targets and timelines, for achieving virtual elimination of carcinogens and other toxic (persistent, bioaccumulative, and endocrine disrupting) chemicals in Ontario’s waters.**

## **Conclusion**

In CELA’s review of the freshwater aspects of the proposed Made-in-Ontario Environment Plan, there are significant improvements to be made in order to achieve the vision of the title: “Preserving and Protecting Our Environment for Future Generations”.

CELA has outlined some recommendations (which are collected below for ease of reference) and we are prepared to meet at a mutually convenient time in order to discuss in detail how the proposed Made-in-Ontario Environment Plan can be improved.

### **Summary of Recommendations**

**Recommendation 1:** CELA recommends that the government ensure that the Made-in-Ontario Environment Plan is a living document, that is regularly reviewed and improved, particularly by making all of the commitments “actionable”, with targets, timelines, indicators (of success/progress).

**Recommendation 2:** CELA strongly recommends that the progress indicators are developed immediately (eg, within the next few weeks/months). Too often, the measures of success are left until far into an initiative, making it challenging for the public to understand what the policy is (or policies are) seeking to achieve.

**Recommendation 3:** CELA recommends that the government provide clarity about what frequency can be expected for the reporting.

**Recommendation 4:** CELA recommends that emphasis be put on improved stormwater management, investment in green infrastructure, prioritizing ecosystem and human needs within the water taking program, and significantly improving the Ontario Low Water Response policy.

**Recommendation 5:** CELA recommends careful consideration of the potential to address climate change through water conservation and green infrastructure policies.

**Recommendation 6:** CELA recommends that Ontario move ahead to establish runoff volume control targets and implement low impact development stormwater management.

**Recommendation 7:** CELA recommends that the government ensure that the pursuit of red tape reduction is not at odds with proposed commitments in the Made-in-Ontario Environment Plan.

**Recommendation 8:** CELA recommends that clear targets, milestones, timelines and investment commitments be made to ensure clean, safe drinking water for all Ontarians.

**Recommendation 9:** CELA recommends that there be additional commitments (beyond existing) that focus on preventing harmful algal blooms throughout Ontario.

**Recommendation 10:** CELA recommends that a clear action plan be developed which will transition all municipalities to providing real-time reporting within a specified timeline.

**Recommendation 11:** CELA recommends that the government ensure publicly available progress report is released well in advance of consultations on the Strategy, to allow consideration of what's been achieved and what's been neglected.

**Recommendation 12:** CELA recommends that the government ensure the Strategy contains principles to guide all government decision-making related to the region, measurable targets, and progress indicators.

**Recommendation 13:** CELA recommends that the government set out a plan, with clear targets and timelines, for achieving natural systems protection and restoration.

**Recommendation 14:** CELA recommends that the government take specific actions that are aimed at significantly reducing the use of road salts, including setting a Provincial Water Quality Objective for chlorides that reflects the heightened threats in Ontario, regulating road salt use, and addressing liability concerns.

**Recommendation 15:** CELA recommends that the Schedule 5 of Bill 66 be eliminated.

**Recommendation 16:** CELA recommends that the government set out a plan, with clear targets and timelines, for achieving virtual elimination of carcinogens and other toxic (persistent, bioaccumulative, and endocrine disrupting) chemicals in Ontario's waters.

Attachment: Ontario Freshwater Priorities (April 2018)

*Ontario's Fresh Waters Need Targets, Timelines, and Investments*

As a province, we are stewards of close to a quarter of Earth's available surface fresh water, and have a responsibility to take action to ensure fresh water protection and restoration. As such, the undersigned individuals and organizations believe clear commitments are necessary to protect and restore the fresh waters of our province.

## *We Need to Protect and Restore Ontario's Waters*

The lakes, rivers, and streams of Ontario's watersheds are sources of our drinking water and support our commercial and recreational activities. Wetlands are important features providing valuable ecological services, including water filtration and flood protection. The waters of the Great Lakes alone supplies drinking water to almost 80% of Ontarians. And, as a region, the Great Lakes - St Lawrence River provinces and states have a GDP of USD \$5.8 trillion, or roughly 28% of combined U.S. and Canadian economic activity. In particular, recreational anglers contribute more than \$600 million to Ontario's economy and Lake Erie's \$240 million commercial fishery is one of the largest in the world.

Indigenous communities are spiritually and culturally connected with water. Section 35 of the Canadian Constitution protects the rights of indigenous peoples to fishing, hunting, farming and trading, and spiritual grounding - all of which require clean, fresh water.

## *Ontario's Waters Are Threatened*

Despite the importance of fresh water, we are experiencing ongoing threats, which are exacerbated by climate change and population pressures. The financial impacts of flooding in particular are significant. The Insurance Bureau of Canada reported that property damage caused by the 2013 storm that swamped the GTA was more than \$850 million. Additionally, one-third of Ontarians and 98% of rural Ontario rely on non-municipal water systems, and are therefore particularly vulnerable to threats to their drinking water.

Other threats include:

- Algae outbreaks in Lake Erie have compromised drinking water sources, clogged water intake pipes, impeded recreational uses, degraded aquatic habitat, and threatened fish populations.
- Chemical pollution from sources such as pesticides, industrial and municipal effluent, and toxic chemicals are an increasing concern for human and ecological health. For example, endocrine disrupting substances that are found in some pesticides, plastics, flame retardants, and fragrances can negatively impact reproduction and brain function in people and animals, and increase the risk of some cancers.
- Invasive species disrupt the aquatic food web and push out native species. If Asian carp establish themselves in the Great Lakes - St Lawrence River Basin,

the likely result will be significant declines in the industries and jobs that depend on recreational boaters.

### *What Needs To Be Done*

Given the importance of fresh water and the ongoing threats, we believe the following commitments need to be made.

Protect drinking water by:

- Eliminating all long-standing boil water advisories and persistent drinking water quality violations and ensuring drinking water source protection for all Ontarians by 2022
- Reaffirming the target of a 40% reduction in total and dissolved reactive phosphorus in Lake Erie by 2025; with an interim goal of 20% by 2020

Protect habitats and biodiversity by:

- Protecting 17% of Ontario's lands and fresh waters by 2020, in accordance with Canada's commitment under the Convention on Biological Diversity
- Protecting and restoring wetlands to move us toward reversing wetland loss by 2022, by making provincially significant wetlands, Hudson Bay Lowlands, Great Lakes coastal wetlands (and other wetland types of high ecological value) strictly off limits to development, and by committing to stronger programs to scale up wetland restoration
- Reviewing, integrating, and managing substances that are harmful to aquatic life, including chloride pollution from the application of road salts

Protect beaches, lakes, and rivers by:

- Preventing nuisance algae by reducing overall emissions of nutrient pollutants to water from Ontario industries and municipalities as reported to the National Pollutant Release Inventory (NPRI) by 40% by 2028 compared to the 2015 reporting year
- Ensuring real-time, public notification of sewage spills, including combined sewage overflow (CSO) events, in all municipalities, and eliminating the release of inadequately or untreated sewage by 2022
- Supporting implementation of agricultural best management practices to manage the impacts of nutrients on water quality

Protect homes and businesses from flooding by:

- Ensuring all municipalities achieve tree canopy targets by 2030
- Dedicating 15% of infrastructure funds to implementing living green infrastructure

- Assessing the extent of flood vulnerabilities through watershed and shoreline studies

Protect fish and other aquatic life by:

- Reducing overall emissions of carcinogens and other toxic (persistent, bioaccumulative, and endocrine disrupting) chemicals in industrial and municipal wastewaters as reported to the National Pollutant Release Inventory (NPRI) by 25% by 2022 compared to the 2015 reporting year, with a plan to move to virtual elimination of such emissions by 2030
- Preventing invasive species, such as Asian carp, from taking hold in Ontario and stepping up efforts to knock back invasive species that have already taken hold, including phragmites and the round goby

In addition to making clear commitments with targets and timelines, we believe that adequate resources must be dedicated to accomplishing the task.

Water is crucially important to the health of Ontario's people, wildlife, ecosystems, and economy. Clear commitments, targets with timelines, and investments are needed. We will be looking for significant progress toward protection and restoration of fresh waters in Ontario, particularly within the Great Lakes - St Lawrence River Basin.

Sincerely,

Theresa McClenaghan  
Executive Director and Counsel  
Canadian Environmental Law  
Association  
Elizabeth Hendriks  
Vice-President, Freshwater  
Conservation  
WWF-Canada

Lynette Mader  
Manager of Provincial Operations -  
Ontario  
Ducks Unlimited Canada

Barbara King, Executive Director  
Watersheds Canada

Tim Gray  
Executive Director  
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Jill Ryan  
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Freshwater Future Canada

Kim Gavine  
General Manager  
Conservation Ontario

Kris Lee, Chair  
Wallaceburg Advisory Team for a Cleaner  
Habitat

Andrew McCammon, Executive  
Director  
Ontario Headwaters Institute

Alice Casselman, President  
Association for Canadian Educational  
Resources

Cassie Barker, Executive Director  
Women's Healthy Environments  
Network

Caroline Schultz, Executive Director  
Ontario Nature

Linda Heron, Chair  
Ontario Rivers Alliance

Lino Grima, Ontario Chapter  
Sierra Club Canada Foundation

Sandra Thomson, President  
CFUW Ontario Council

Derek Coronado, Coordinator  
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Lynda Lukasik, PhD  
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Program  
Booth School of Engineering Practice and  
Technology  
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Gloria Marsh, Executive Director  
York Region Environmental Alliance

Ellen Mortfield  
Executive Director  
EcoSuperior Environmental Programs

Raj Gill  
Great Lakes Organizer  
Canadian Freshwater Alliance

## **APPENDIX B: PROPOSED ENVIRONMENT PLAN AND PROTECTING OUR AIR, LAKES AND RIVERS**

**Prepared by  
Ramani Nadarajah, Counsel, Canadian Environmental Law Association**

### **Introduction**

Ontario's Environment Plan states that it recognizes the environmental and socio-economic benefits of protecting Ontario's lakes and rivers.<sup>5</sup> It also commits the province to effective monitoring and "strong enforcement" in order to safeguard surface water resources.<sup>6</sup> However, after the Environment Plan was released the Ontario government announced it would eliminate the Municipal Industrial Strategy for Abatement (MISA) program that aims to reduce the flow of toxic chemicals into Ontario's waterways. For the reasons outlined below, CELA recommends that the MISA regulations not be revoked. Instead, the MISA regulations must be retained and strengthened.

### **Repeal of Nine Regulations under the Municipal Industrial Strategy for Abatement (MISA) program**

The MISA program was established in Ontario in June 1986, to control hazardous and conventional discharges from industrial and municipal sources.<sup>7</sup> It has been described by the Ontario Ministry of Environment, Conservation and Parks (MECP) as "a major and important component in the Ministry's strategy to abate pollution sources and improve the ecosystem."<sup>8</sup> MISA's "ultimate goal is the virtual elimination of persistent toxic contaminants" from Ontario's waterways.<sup>9</sup> According to the Ministry, "[t]he fulfilment of this goal is necessary to reduce the risk of damage to the ecosystem and to protect public health by minimizing the presence of toxics in drinking water, fish and wildlife."<sup>10</sup> The program establishes effluent standards for nine industrial sectors: electric power generation<sup>11</sup>, inorganic chemical<sup>12</sup>; industrial minerals<sup>13</sup>, iron

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<sup>5</sup> Ontario, Ministry of Environment Conservation and Parks, *Preserving and Protecting our Environment for Future Generations: A Made-In-Ontario Environment Plan*, p. 11.

<sup>6</sup> *Ibid* at 12.

<sup>7</sup> Mark S. Winfield, *Blue-Green Province: The Environment and Political Economy of Ontario*, (Vancouver, UBC Press, 2012) at p. 43. Although, MISA was intended to address both industrial and municipal discharges, no regulations regarding discharges from municipal sewage treatment plants were ever adopted. See accompanying text at 70.

<sup>8</sup> Ontario, Ministry of the Environment and Energy, *Water Management: Policies, Guidelines, Provincial Water Quality Objectives*, (Queen's Printer for Ontario, 1994) at 3.

<sup>9</sup> *Municipal-Industrial Strategy for Abatement (MISA): A Policy and Program Statement of the Government of Ontario on Controlling Municipal and Industrial Discharges into Surface Water*, ISBN 0-7729-7200-1, (Toronto: Queen's Printer for Ontario at p. 7.

<sup>10</sup> *Ibid*.

<sup>11</sup> Ontario Regulation 215/95 (Electric Power Generating Sector)

<sup>12</sup> Ontario Regulation 64/95 (Inorganic Chemical Sector)

<sup>13</sup> Ontario Regulation 561/94 (Industrial Minerals Sector)

and steel manufacturing<sup>14</sup>, metal casting<sup>15</sup>; metal mining<sup>16</sup>; organic chemical manufacturing<sup>17</sup>; petroleum<sup>18</sup> and; pulp and paper.<sup>19</sup> The effluent standards are based on best available technology economically available (BATEA) for each of these nine sectors and, as technology improved, the allowable effluent levels were to be decreased.<sup>20</sup> The effluent limits include both allowable maximum concentration for the discharge of a contaminant as well as total contaminant loading limits.<sup>21</sup> The regulations also specify sampling, monitoring and reporting requirements for the nine industrial sectors. The self-reporting requirements in the MISA regulations were backed up by Ministry inspections, so that appropriate abatement and/or enforcement action could be undertaken to address any violations.<sup>22</sup>

The MISA program has resulted in significant reductions in toxic discharges into receiving waters. Indeed, MISA's pulp and paper regulations, along with federal regulations under the *Fisheries Act* and the *Canadian Environmental Protection Act* are regarded as having contributed to "one of the great success stories in Canadian environmental policy, leading to major reductions in discharges of both conventional and toxic pollutants from the sector."<sup>23</sup>

### **Proposed Changes Announced by the Ministry of Economic Development, Job Creation and Trade**

On December 6, 2018, the Minister of Economic Development, Job Creation and Trade announced a package of 30 actions to "reduce red tape and regulatory burden."<sup>24</sup> The government's press release states that these proposed changes "along with regulatory changes, eliminate burdensome regulations so businesses can grow, create and protect good jobs."<sup>25</sup> One of the proposed changes is to revoke the nine regulations related to MISA. The government's press release states:

In Ontario, 113 facilities are currently subject to nine sector-specific industrial wastewater regulations, as well as site-specific ECAs. To reduce regulatory burden for facilities while maintaining oversight over release of industrial wastewater, the government would transfer applicable requirements from the nine regulations into the ECAs for these facilities, and then revoke the nine regulations. These changes would

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<sup>14</sup> Ontario Regulation 214/95 (Iron and Steel Manufacturing Sector)

<sup>15</sup> Ontario Regulation 562/94 (Metal Casting Sector)

<sup>16</sup> Ontario Regulation 560/94 (Metal Mining Sector)

<sup>17</sup> Ontario Regulation 63/95 (Organic Chemical Manufacturing Sector)

<sup>18</sup> Ontario Regulation 537/93 (Petroleum Sector)

<sup>19</sup> Ontario Regulation 760/93 (Pulp and Paper Sector)

<sup>20</sup> David Estrin & John Swaigen, *Environment on Trial: A Guide to Ontario Environmental Law and Policy* (Toronto: Emond Montgomery Publications Limited, 1993) at 546.

<sup>21</sup> *Ibid.*

<sup>22</sup> Ontario, Ministry of the Environment and Energy, *supra* note 4 at 18.

<sup>23</sup> Winfield, *supra* note 3 at 87.

<sup>24</sup> Ontario, Ministry of Economic Development, Job Creation and Trade, "Proposed Changes to Create Jobs and Reduce Regulatory Burden in Specific Sectors", Newsroom (Toronto: 6 December 2018). Online; <<https://news.ontario.ca/medg/en/2018/12/proposed-changes-to-create-jobs-and-reduce-regulatory-burden-in-specific-sectors.html>>.

<sup>25</sup> *Ibid.*

allow businesses to have greater operational flexibility, such as the ability to implement changes to their production processes, so they could focus on being more innovative and competitive.<sup>26</sup>

## **Analysis**

Repealing the MISA regulations and transferring the applicable requirements into individual environmental compliance approvals makes Ontario's water bodies extremely vulnerable to toxic pollution from industrial facilities. It also fundamentally undermines regulatory consistency and certainty of the effluent limits for major industrial facilities that discharge pollution into Ontario's waters.

The government's proposal to transfer the requirements of MISA into the ECA process fundamentally weakens the regulatory framework governing water pollution and creates the very problem that the MISA regulations were enacted to address. Prior to MISA, the Ministry's approach to water protection was undertaken through the approvals process on a "case-by-case basis through negotiations between local ministry staff and the industry concerned."<sup>27</sup> This resulted in highly variable limits, in terms of both the concentration and types of chemicals, which could be discharged by industrial facilities operating in Ontario.<sup>28</sup> According to legal experts, the previous approach led to "[d]ischarge objectives for specific pollutants" not being included on a "consistent basis" in the approvals issued by the Ministry to industrial facilities.<sup>29</sup>

The Ministry was also criticized for ignoring a "wide range" of toxic chemicals, and focusing only on "conventional pollutants, such as suspended solids, some heavy metals and a limited group of organic pollutants."<sup>30</sup> The MISA regulations were enacted precisely to avoid these flaws in the Ministry's approvals process, which has led to highly inconsistent and unpredictable standards for water protection in the province. A major achievement of the MISA program, therefore, was that it removed the establishment of ad-hoc discharge limits for individual facilities by Ministry officials, and instead ensured effluent standards were set by regulations which applied province wide, ensuring consistency and predictability in the regulatory framework governing water protection in Ontario.<sup>31</sup> Under MISA, the "bipartite bargaining model" that had been previously utilized to negotiate actual discharge levels was instead replaced by a multi-stakeholder advisory committee for each of the nine sectors, composed of industrial representatives and members of the public.<sup>32</sup>

Although the MISA regulations decreased toxic pollution discharges into water, the program itself has been long overdue for improvement. In a recent report, the Environmental Commissioner of Ontario (ECO) stated:

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<sup>26</sup> *Ibid.*

<sup>27</sup> David Estrin and John Swaigen, *supra* note 16 at 546.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

<sup>32</sup> Winfield, *supra* note 3 at 44.

Many of the toxic industrial chemicals persist for long periods in the environment. As noted above, when the MISA regulations were developed, the goal of the program was “the virtual elimination of persistent toxic substances.” This goal is as important today as it was then, but the MECP seems to have been content to make no progress towards it in 25 years.

In the last quarter century, we have become more aware of the harmful effects of chemicals, while the ability of water bodies to accept them has been eroded by population growth, loss of natural areas and climate change. Meanwhile, it is reasonable to expect that industry has better technology for detecting, managing and reducing toxic chemicals, just as today’s flat screens, LEDs and smart phones outperform 1993’s tube televisions, incandescent bulbs and landline phones. It is long past time for the MECP to update the legal limits for toxic industrial discharges into our water, especially persistent toxic substances.<sup>33</sup>

Accordingly, the ECO recommended that the Ministry update the limits in the MISA regulations and environmental compliance approvals, to require industries to use the best available technology to minimize toxic substance discharged into Ontario waters, and to require industries to virtually eliminate the discharge of persistent toxic substances.<sup>34</sup> While the ECO recommended that the MISA regulations be updated, the ECO cautioned against doing this through the approval process and stated:

The outdated MISA regulations might not matter if up-to-date pollution limits were set by the individual compliance approval issued to each facility under the Ontario Water Resources Act, but this has not happened either. Ontario industrial wastewater approvals are not regularly reviewed and rarely updated. Other jurisdictions, including the U.S Environmental Protection Agency, include expiry dates on approvals for industrial facilities. Ontario does not.<sup>35</sup>

Given the ECO’s findings, the proposal to transfer the requirements of MISA into the ECA process is wholly misguided and will seriously undermine environmental protection in Ontario. The government’s proposal to repeal the MISA regulations will terminate a program that has played a vital role in protecting Ontario from toxic contamination caused by discharges from major industrial facilities. CELA strongly recommends that the existing regulatory framework under MISA program be retained. Furthermore, CELA recommends that the Ministry adopt and implement the ECO’s recommendations regarding MISA. These include the need to update the discharge limits in the MISA regulations and environmental compliance approvals, require industries to use the best available technology to minimize toxic substances discharged into Ontario waters, and to virtually eliminate the discharge of persistent toxic substances.

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<sup>33</sup> Environmental Commissioner of Ontario, *Back to Basics Clean Water Vol 2* (Toronto: Environmental Commissioner of Ontario, 2018) at 85.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid* at 84-85.

## **Recommendations**

**Recommendation 1: CELA strongly recommends that the MISA regulations governing the nine industrial sectors not be repealed.**

**Recommendation 2: CELA recommends the discharge limits in the MISA regulations and environmental compliance approvals be updated.**

**Recommendation 3: CELA recommends that industries be required to use the best available technology to minimize discharges of toxic substances and virtually eliminate discharges of persistent toxic substances.**

## APPENDIX C: ONTARIO'S ENVIRONMENTAL PLAN AND ADDRESSING CLIMATE CHANGE

**Prepared by**

**Jacqueline Wilson and Kerrie Blaise, Counsel, Canadian Environmental Law Association**

### **Introduction**

Ontario needs to take a lead in combating climate change and its adverse effects. A consortium of intergovernmental organizations, including the Organisation on Economic Co-operation and Development and the World Bank, have recognized that climate leadership is a responsibility of industrialized countries. Climate change is a global phenomenon and it is necessary that Ontario support both Canada and the global community in working to reduce greenhouse gases and alleviating its impact on those most vulnerable to its negative effects.

In a recently released report by the World Economic Forum, the “failure of climate-change mitigation and adaptation” was ranked as the second most impactful risk on the global risk scale (weapons of mass destruction ranked first).<sup>36</sup> As detailed below, adaptation to climate change must go hand-in-hand with mitigation.<sup>37</sup> Even if aggressive climate mitigation efforts are undertaken, adaptation is still inevitable and requires detailed consideration by the province in its Environment Plan.

Not only are the negative impacts of climate change most severely felt by low-income people and communities, climate change will increasingly affect the poor by exacerbating already existing vulnerabilities.<sup>38</sup> The Intergovernmental Panel on Climate Change (IPCC) identifies climate change equity as having three dimensions: intergenerational (fairness between generations), international (fairness between states), and national (fairness between individuals).<sup>39</sup>

Currently, low-income people are not considered at all in Ontario's Environment Plan. This is a glaring omission. CELA reiterates its request to the Province that Ontario's climate actions recognize and respond to the impact of climate change on low-income and vulnerable communities, and commit to targeted mitigation and adaptation programs. CELA's

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<sup>36</sup> World Economic Forum, “Insight Report: The Global Risks Report 2019 – 14<sup>th</sup> Edition,” (2019), online: [http://www3.weforum.org/docs/WEF\\_Global\\_Risks\\_Report\\_2019.pdf](http://www3.weforum.org/docs/WEF_Global_Risks_Report_2019.pdf), p 5

<sup>37</sup> Poverty and Climate Change, p V

<sup>38</sup> Agnes van Ardenne-van der Hoeven et al. “Poverty and Climate Change: Reducing the Vulnerability of the Poor through Adaptation,” (2009), online: <http://www.oecd.org/env/cc/2502872.pdf>, p I [Poverty and Climate Change]

<sup>39</sup> Marc Fleurbaey et al. Fifth Assessment Report (AR5), IPCC, 2014 online: <http://www.ipcc.ch/activities/activities.shtml#.UMzUkuB2MiA>.

recommendation is to adopt the model in California where legislation requires that a minimum of 35% of climate change mitigation and adaptation funds are spent on low-income and vulnerable communities.<sup>40</sup>

**Recommendation 1: Ontario’s Environment Plan should explicitly require that a minimum of 35% of climate change mitigation and adaptation funds be spent on low-income individuals and communities.**

### **Climate Change Mitigation**

#### **1. Greenhouse gas reduction targets**

Despite dire warnings in the landmark report released by the IPCC on October 8, 2018, which found that humanity has at most 12 years to drastically reduce GHG emissions to avert a climate crisis, Ontario has chosen to significantly weaken its GHG reduction targets.<sup>41</sup> At the very least, Ontario should maintain its previous emissions reduction targets of 15 per cent below 1990 levels by 2020; 37 per cent below 1990 levels by 2030; and 80 per cent below 1990 levels by 2050.<sup>42</sup> These targets were not ambitious enough to limit warming to 1.5 degrees – therefore it is crucial that Ontario’s target not be weakened, and be strengthened over time, to respond to the immediacy of the threats posed by climate change.

**Recommendation 2: Ontario’s GHG reduction targets should be 15 per cent below 1990 levels by 2020; 37 per cent below 1990 levels by 2030; and 80 per cent below 1990 levels by 2050, and should be strengthened over time.**

#### **2. Electricity emissions are predicted to rise**

The Independent Electricity System Operator (“IESO”) released its planning outlook in September 2018. With the Pickering Nuclear Generating Station scheduled to go offline soon, and the Darlington Nuclear Generation Station being re-built, natural gas is slated to fill the gap in electricity production rather than renewable energy. Accordingly, the IESO predicts that GHG emissions in the electricity sector will increase by an average of 14% for the higher demand scenarios. Its predictions show an increase in emissions of approximately 7 Mt of CO<sub>2e</sub> by 2030.<sup>43</sup>

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<sup>40</sup> *AB-1550 Greenhouse gases: investment plan: disadvantaged communities*, c 369, s 39713, online: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1550](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1550)

<sup>41</sup> “Global Warming of 1.5 °C”, Intergovernmental Panel on Climate Change, 6 October 2018, online: [http://report.ipcc.ch/sr15/pdf/sr15\\_spm\\_final.pdf](http://report.ipcc.ch/sr15/pdf/sr15_spm_final.pdf)

<sup>42</sup> *Climate Change Mitigation and Low-carbon Economy Act, 2016*, S.O. 2016, c. 7, s 6

<sup>43</sup> Independent Electricity System Operator, *2018 Technical Planning Conference*, September 13, 2018, pp 78-79

This increase in emissions in the period until 2030 in the electricity sector does not appear to have been considered in the Environment Plan. Since the Province's goal is only to reduce emissions by 18 Mt of CO<sub>2</sub>e by 2030, an additional 7 Mt of CO<sub>2</sub>e will significantly increase the need for adequately funded mitigation measures. The IESO should also provide its long-term predictions for GHG emissions in the electricity sector, so the Ministry's planning in the period after 2030 can be adjusted accordingly.

**Recommendation 3: The Environment Plan must account for rising emissions in the electricity sector.**

**3. Planned emissions reductions by sector**

The Environment Plan includes a pie-chart which predicts the sources of GHG emissions reductions in Ontario to meet its 2030 target. The plan does not include any detail about how these numbers were calculated. Without more detail about the amount of funding for policies mentioned in the plan and rollout schedules, these predictions are speculative. We also note that 15% of the emissions reductions are assigned to an "innovation" category that is not clearly defined or attached to any particular policies.

**Recommendation 4: The Ministry of Environment, Conservation and Parks should explain how it calculated the proposed emissions reductions by sector, funding for listed policies, and timelines for implementation.**

**4. Consistency with other government actions**

Ontario's climate change plan will not succeed if other government policies serve to undermine GHG reduction efforts. For instance, the Ministry of Municipal Affairs and Housing is currently consulting on changes to the *Provincial Policy Statement, 2014* and the *Growth Plan for the Greater Golden Horseshoe, 2017*. Amendments that increase urban sprawl will significantly undermine climate change mitigation efforts. Likewise, Metrolinx's decision to remove electric vehicle charging stations from GO station parking lots will discourage electric vehicle use and undermine the Plan's goal of achieving 16% of its emissions reductions by 2030 from low carbon vehicle uptake.<sup>44</sup>

**Recommendation 5: Government action across ministries needs to be coordinated to avoid undermining climate change mitigation efforts.**

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<sup>44</sup> Nick Boisvert, "Metrolinx removes electric vehicle chargers from GO station parking lots", CBC News, January 10, 2019

## 5. Ontario Carbon Trust and Reverse Auction

The Ontario Carbon Trust and Reverse Auction is one of the only policy measures that includes a funding commitment in the Environment Plan. Under a GHG pricing scheme, the “polluter pays” principle applies. GHG emitters have benefited from polluting without cost to themselves, externalizing the costs of climate change to governments and individuals. A polluter pays framework would hold emitters to account and we encourage the government to pursue policy options under this framework, including the output-based pricing scheme mentioned in the Environment Plan or other regulations. Under this current proposal for a Carbon Trust and Reverse Auction, the principle is reversed – the public is paying polluters to reduce emissions.

The Ontario government has set aside \$350 million for a carbon trust and \$50 million for reverse auctions over four years. We note that this expenditure is significantly lower than what was available for complementary GHG reduction initiatives from auction revenues under the cap and trade program, where a total of \$2,873,158,143.54 was raised in one and a half years.<sup>45</sup> The plan only predicts that the carbon trust and reverse auction will account for 4% of the emissions reductions to 2030.

The criteria for the funds must be carefully designed to ensure the inclusion of low-income and vulnerable community programs. Funding criteria must also value equity and health concerns. For instance, the environmental impacts of air pollution are well documented and climate change mitigation measures that reduce air pollution provide significant health co-benefits. Those co-benefits should be valued and reflected in criteria to choose climate change mitigation measures.

A cost-effectiveness test, or the proposed lowest-cost criteria for the reverse auction, would be ineffective in accounting for the impacts of climate change on low-income and vulnerable communities. It would likely act as a deterrent to the creation and delivery of appropriate and accountable programs.

A cost-effectiveness paradigm would favour programs with the fewest and least complicated barriers to delivery. The delivery of programs to low-income and vulnerable communities often require that the programs overcome significant additional barriers to be successful.

The funding criteria for the Ontario carbon trust and reverse auction should include:

- 1- Climate change programs that are accessible province-wide to low-income and vulnerable communities;

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<sup>45</sup> *Ontario Post-Joint Auction Public Proceeds Report*, Joint Auction #15, May 2018, p 4

- 2- Programs that require no upfront cost to low-income and vulnerable people;
- 3- A program design, and funding criteria, that addresses non-financial barriers to program success (i.e. communication issues, distrust of government programs);
- 4- Programs that assist with capacity in low-income and vulnerable communities to allow organizations representative of those communities to apply for program funding and deliver programs;
- 5- Programs which are simple to access. They should be integrated with other programs designed for low-income and vulnerable communities, for instance by including only one screening and intake process;
- 6- Programs that are “turnkey solutions”, which do not require additional efforts or resources to be expended by low-income and vulnerable communities; and
- 7- Programs that include on-going measurement of results and mechanisms to gather and address feedback from low-income and vulnerable communities.

The funds need to be carefully designed to ensure that projects that would have occurred anyway are not being funded.

As well, it would be much more effective to create an overall strategy for the funds rather than choosing projects based on self-selected applications. Under the current model, there is no guarantee that the projects will serve a strategic purpose and permanently reduce overall GHG emissions.

**Recommendation 6: The Ontario government should pursue policies that adhere to the polluter pays principle.**

**Recommendations 7: Ontario should significantly increase the amount of funding set aside for the emissions reduction funds.**

**Recommendation 8: Funding criteria for the Ontario Carbon Trust and Reverse Auction should ensure that low-income and vulnerable communities will receive funding.**

**Recommendation 9: Ontario should clearly identify its priorities for the Ontario Carbon Trust and Reverse Auction fund, and ensure that funding is used strategically and reduces overall GHG emissions.**

## 7. Natural Gas Conservation Programs

CELA supports the Plan's proposal to increase conservation programs for natural gas, and urges the government to focus on expanding existing programs for low-income and vulnerable communities.

Electricity and natural gas efficiency programs provide important health co-benefits. For instance, old appliances can be both inefficient and pose potential safety hazards. Efforts to reduce energy costs can be dangerous.<sup>46</sup> One example is that old water heaters left at lukewarm temperatures, in order to reduce energy costs, are a breeding ground for Legionnaire's disease.

**Recommendation 10: Ontario should expand natural gas conservation programs for low-income and vulnerable communities.**

## 8. Low-Income Housing Retrofits

The Environment Plan mentions tax incentives for homeowners to reduce their energy consumption. It should also include retrofit programs for low-income people living in social-housing, the private rental market, and low-income homeowners.

It is critical that housing retrofit programs target all low-income tenants and homeowners, not only those living in social housing. The majority of low-income renters live in the private rental market:

- Only 29% of low-income renter households in Ontario live in subsidized housing. 71% live in the private rental market.
- 87% of Ontario Works beneficiaries live in the private rental market.
- 68% of Ontario Disability Support Payment beneficiaries live in the private rental market.
- 37% of all renter households in Ontario are low-income; 9% of owner households in Ontario are low-income.

Affordable housing is a major issue in both urban and rural Ontario, and there are a variety of pressures on housing markets in each type of community that may limit access to affordable housing for low-income residents. In rural Ontario, some of the major affordable housing issues include the age and poor condition of homes, as well as increases in housing prices and utility

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<sup>46</sup> Pembina Institute and CELA, *Power for the Future: Towards a Sustainable Electricity System for Ontario*, May 2004, online: <http://www.cela.ca/sites/cela.ca/pdf/energyreport-fullreport.pdf>

costs. Additionally, there are often limited supplies of alternative housing for low-income residents in rural Ontario.

The climate change plan should continue to fund the social housing retrofits previously targeted by the Social Housing Apartment Retrofit Program (SHARP) and the Social Housing Apartment Improvement Program (SHAIP). The climate change plan should also include free programs to assist low-income people living in the private rental market, and low-income homeowners.

**Recommendation 11: The climate change plan should include retrofit programs for low-income people living in social-housing, the private rental market, and low-income homeowners.**

## **Climate Change Adaptation**

### **1. Reducing the Vulnerability of Low-Income Communities through Adaptation**

#### *1.1 Strengthening Adaptation*

One of the best ways to address the impacts of climate change on low-income people is through the integration of adaptation into planning.<sup>47</sup> This requires:

**A vulnerability assessment and low-income barrier study** to be included within the province-wide climate change impact assessment.<sup>48</sup> The Environment Plan focuses on vulnerability assessments for key sectors. In addition to identifying how climate change will impact Ontario's communities, infrastructure, economics and natural environment, it is necessary to conduct a vulnerability assessment to understand the barriers faced by low-income communities in responding to climate change threats.

California has conducted low-income barrier studies regarding access to renewable energy, weatherization, and energy efficient technologies, and zero-emission or near zero-emission transportation options.<sup>49</sup>

This is the first step in identifying the particular climate change adaptation needs and challenges of low-income Ontarians.

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<sup>47</sup> Poverty and Climate Change, p V

<sup>48</sup> Ontario, *A Made-in-Ontario Environment Plan* (29 November 2018), p 3

<sup>49</sup> California Energy Commission, *SB 350 Low-Income Barriers Study, Part A – Commission Final Report*, (California: December 2016), online: [http://www.energy.ca.gov/sb350/barriers\\_report/](http://www.energy.ca.gov/sb350/barriers_report/); California Air Resources Board, *Low-Income Barriers Study, Part B: Overcoming Barriers to Clean Transportation Access for Low-Income Residents* (California: February 2018), online: [https://ww2.arb.ca.gov/sites/default/files/2018-08/sb350\\_final\\_guidance\\_document\\_022118.pdf](https://ww2.arb.ca.gov/sites/default/files/2018-08/sb350_final_guidance_document_022118.pdf)

**Empower communities** so that they can meaningfully participate in the province-wide climate change impact assessment. Many communities lack the capacity to fully engage on provincial discussions of climate change. It is necessary they be provided resources to ensure their contribution of local knowledge and experience.

**Improve transparency and public dialogue** to ensure the accountability of the province's decision-making process with regards to climate change adaptation measures. The province should clearly indicate how low-income and vulnerable communities have been considered in the decision-making process.

**Ensure environmental sustainability** across all sectors. Climate change will alter the quality and productivity of natural resources, decrease biological diversity and exacerbate current environmental degradation. Therefore, to prevent the underachievement of sustainable development efforts, threats must be identified and their prevention prioritized.

**Recommendation 12: Ontario's province-wide climate change impact assessment must include a low-income barriers study to identify the particular needs of low-income and vulnerable communities.**

### 1.2 *Robust Adaptation Planning*

While the province's Environmental Plan references modernizing the Ontario Building Code, reviewing the Municipal Disaster Recovery Assistance program, implementing tax policy options for homeowners to make their homes more resilient, updating land use planning policies, and building resilience into infrastructure, very few details are provided. CELA notes, however, that land use planning policies are currently under review by the Ministry of Municipal Affairs and Housing and there has been no focus on promoting, or even considering, climate change mitigation or adaptation efforts.

Therefore, CELA recommends that following the province's climate impact assessment, detailed policy actions and specific adaptation goals are released to the public. It is critical that environment and climate change policies and the achievement of targets be transparent – frequent progress and benchmarking reports should demonstrate compliance with adaptation goals over time and allow for adjustments to the plan if necessary.<sup>50</sup> While the Environment Plan commits to a review of the plan on a four-year basis, without benchmarking reports, there will be a paucity of data from which to make improvements or track successes.

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<sup>50</sup> Canadian Institute of Planners, *Climate Change Adaptation Planning: A Handbook for Small Canadian Communities*, (2011) p 5.

**Recommendation 13: The province’s climate change impact assessment must result in clear policy actions and adaptation goals to be released to the public. Progress and benchmarking reports should be conducted on a two-year basis to ensure improvements to the plan can be made and successes can be tracked.**

*1.3 Lessons in Adaptation: Case Study of Parry Sound 33*

The province should undertake a review of existing natural disaster reduction and prevention programs, in order to reduce current vulnerabilities and respond to lessons learned from last year’s forests fires. For weeks, the forest fire named “Parry Sound 33” burned out of control, growing to a size in excess of 11,000 hectares.

To discuss actions which could be taken to improve fire prevention and emergency planning in Ontario in lieu of the province’s consultation on its Environment Plan, CELA met with the Mayor and Chief Administrative Officer of the French River Municipality in January 2019. Some members of their community, which bordered Parry Sound 33, were evacuated and others placed on an evacuation alert, which required they be ready to evacuate their homes on short notice.<sup>51</sup>

While Ontario’s Environment Plan recognizes that “forest fires pose a serious threat to public safety, communities, and infrastructure”, it also states that they are an “important natural process in Ontario’s forest ecosystems.” Based on the lessons learned from Parry Sound 33, it is necessary that the Environment Plan distinguish between fires, which may be man-made, and fires caused by lightning. Parry Sound 33 was a human-caused fire and was classified by the Ministry of Natural Resources and Forestry (MNRF) as “out of control” for weeks. In total, the assistance of over 300 fire fighters from across Canada, the United States and Mexico, heavy helicopters and water bombers from Ontario and Quebec, and 300,000 feet of fire hose were relied upon in suppressing the fire.

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<sup>51</sup> French River Municipality, *Parry Sound 33 Forest Fire – News Release Update #9* (30 July 2018), online: <https://frenchriver.municipalwebsites.ca/Editor/images/Update%20July%2030th%202018%20Evacuation%20ALert.pdf>



**Image 1.** Water bombers stationed at the Sudbury airport

Photo credit: K. Blaise

First, the Municipality makes a keen distinction between this fire and other naturally-caused forest fires ignited during the same timeframe. During the weeks when Parry Sound 33 burned out of control, 6 other fires caused by lightning occurred in the region. All were extinguished quickly, without incident. Therefore, while forest fires are part of ecological processes and aid in forest succession, the Environment Plan must ensure that the particular danger posed by human-caused fires – which can burn at much higher temperatures and rates – are not overlooked.

Secondly, while the Municipality had emergency measures in place – including a Vulnerable Persons Registry to ensure the transport and care of elderly persons and those without personal transportation – the Municipality underscored the need for greater attention to fire *prevention*. CELA supports the Municipality’s recommendation of heightened fire prevention action, which requires vigilant oversight of worksites and projects occurring in the North, especially during conditions of extreme dryness and high temperatures.

Third, forest fires typically occur in the summer months when tourism – which supports many seasonal businesses – is at its peak. Tourism is an important source of income for many Northern communities and forest fires can result in severe economic losses. In addition to taking aggressive action on climate mitigation, Ontario’s Environment Plan must ensure resourcing for communities disproportionately exposed to the negative effects of climate change.

Fourth, due to the size of Parry Sound 33, more than one municipality was tasked with updating its residents, responding to information requests and disseminating information on emergency preparedness and planning. While communities governed by a Local Services Board or a Mayor and Council can assist in sharing information, the Municipality recommends that the province take a leadership role in emergency communications to ensure consistency in messaging. Rather than the province, namely the MNRF, relaying emergency updates to municipalities and municipalities then drafting and disseminating updates to share with residents and neighbouring communities, the Municipality recommends communication of emergency updates and information be led by the province.

This approach would have been of benefit during Parry Sound 33, as due to the increased population in the North in the summer months, there is the potential for incidences of conflict between recreational users trying to access their cottage or camp and fire suppression activities. As the Municipality shared with CELA, they are neighbored by unincorporated townships, First Nations communities, and other municipalities. Thus, not only are a mixture of federal, provincial, municipal and First Nations governments involved, many volunteer organizations and volunteer emergency responders are as well (which, were critical to ensuring the safety of residents and tourists during Parry Sound 33).

Ontario should ensure that a province-wide emergency communication network is in place and operational, so that consistent messages and equal levels of public awareness are disseminated.

**Recommendation 14: The Environment Plan must ensure that the particular danger posed by human-caused fires – which can burn at much higher temperatures and rates than naturally caused fires – are not overlooked in emergency planning.**

**Recommendation 15: Action on fire prevention is needed. Fire prevention strategies should include vigilant oversight of worksites and projects occurring in the North, especially during conditions of extreme dryness and high temperatures.**

**Recommendation 16: Ontario’s Environment Plan must ensure resourcing for communities disproportionately exposed to the negative effects of climate change.**

**Recommendation 17: A province-wide emergency communication network should be established and operationalized to ensure that all Ontarians affected by an emergency, like a forest fire, receive sufficient information and regular updates.**

## **Conclusion**

Thank you for your consideration of CELA’s recommendations and we look forward to providing feedback on future, more detailed proposals on climate change mitigation and adaptation in Ontario.

## **Summary of Recommendations**

**Recommendation 1: Ontario’s Environment Plan should explicitly require that a minimum of 35% of climate change mitigation and adaptation funds be spent on low-income individuals and communities.**

**Recommendation 2: Ontario's GHG reduction targets should be 15 per cent below 1990 levels by 2020; 37 per cent below 1990 levels by 2030; and 80 per cent below 1990 levels by 2050, and should be strengthened over time.**

**Recommendation 3: The Environment Plan must account for rising emissions in the electricity sector.**

**Recommendation 4: The Ministry of Environment, Conservation and Parks should explain how it calculated the proposed emissions reductions by sector, funding for listed policies, and timelines for implementation.**

**Recommendation 5: Government action across ministries needs to be coordinated to avoid undermining climate change mitigation efforts.**

**Recommendation 6: The Ontario government should pursue policies that adhere to the polluter pays principle.**

**Recommendations 7: Ontario should significantly increase the amount of funding set aside for the emissions reduction funds.**

**Recommendation 8: Funding criteria for the Ontario Carbon Trust and Reverse Auction should ensure that low-income and vulnerable communities will receive funding.**

**Recommendation 9: Ontario should clearly identify its priorities for the Ontario Carbon Trust and Reverse Auction fund, and ensure that funding is used strategically and reduces overall GHG emissions.**

**Recommendation 10: Ontario should expand natural gas conservation programs for low-income and vulnerable communities.**

**Recommendation 11: The climate change plan should include retrofit programs for low-income people living in social-housing, the private rental market, and low-income homeowners.**

**Recommendation 12: Ontario's province-wide climate change impact assessment must include a low-income barriers study to identify the particular needs of low-income and vulnerable communities.**

**Recommendation 13: The province's climate change impact assessment must result in clear policy actions and adaptation goals to be released to the public. Progress and benchmarking reports should be conducted on a two-year basis to ensure improvements to the plan can be made and successes can be tracked.**

**Recommendation 14: The Environment Plan must ensure that the particular danger posed by human-caused fires – which can burn at much higher temperatures and rates than naturally caused fires – are not overlooked in emergency planning.**

**Recommendation 15: Action on fire prevention is needed. Fire prevention strategies should include vigilant oversight of worksites and projects occurring in the North, especially during conditions of extreme dryness and high temperatures.**

**Recommendation 16: Ontario’s Environment Plan must ensure resourcing for communities disproportionately exposed to the negative effects of climate change.**

**Recommendation 17: A province-wide emergency communication network should be established and operationalized to ensure that all Ontarians affected by an emergency, like a forest fire, receive sufficient information and regular updates.**

**APPENDIX D: COMMENTS ON THE ENVIRONMENT PLAN'S PROPOSALS  
REGARDING ENVIRONMENTAL ASSESSMENT AND WASTE**

**Prepared by  
Richard D. Lindgren, Counsel, Canadian Environmental Law Association**

These comments primarily focus on certain proposals outlined in the Environment Plan's chapters entitled "Reducing Litter and Waste in our Communities & Keeping Our Land and Soil Clean" and "Conserving Land and Greenspace."

For the reasons outlined below, CELA makes the following recommendations in relation to these chapters:

**Recommendation 1: The Environment Plan should be immediately revised to provide further details on the nature and scope of the EA changes under consideration by the Ontario government, and to contain a clear commitment to meaningful public engagement during the development of such changes.**

**Recommendation 2: The Environment Plan should be immediately revised to:**

- **specify how municipalities will be empowered to play a greater role in the planning and approval of waste disposal sites;**
- **commit to using landfill bans for organic waste, designated recyclables, and problematic products or packaging present in the waste stream;**
- **expressly adopt the 3Rs hierarchy (reduce, reuse and recycle);**
- **develop provincial standards regarding the recyclability and toxicity of products and packaging;**
- **prohibit thermal treatment of solid waste and recyclables; and**
- **apply Part II of the EAA to all new or expanded waste disposal sites.**

**(a) The Environment Plan Fails to Identify Any EA Reforms**

From an environmental planning perspective, one of the most significant – but unexplained – provincial actions proposed in the Environment Plan is the simplistic one-sentence commitment to reform Ontario's environmental assessment ("EA") regime.

In particular, the Environment Plan states that the provincial government will "look to modernize Ontario's environmental assessment process, which dates back to the 1970s, to address duplication, streamline processes, improve service standards and better recognize other planning processes" (page 48).

No other information or details are provided in the Environment Plan to clarify the government's specific intentions regarding EA reform in Ontario. However, in CELA's experience, when words such as "modernize" or "streamline" are used in the EA context, they typically serve as an unfortunate metaphor (or code) for the systematic reduction or elimination of robust EA requirements in order to expedite project approvals. If that outcome is what the Environment Plan contemplates, then CELA is strongly opposed to any governmental attempts that further eviscerate Ontario's *Environmental Assessment Act* ("EAA").

While the Environment Plan is correct in pointing out that *EAA* dates back to the 1970s, it neglects to acknowledge that the *EAA* was fundamentally overhauled in 1996 by the Ontario government in order to streamline the EA process. These sweeping legislative changes were roundly criticized by environmental groups, academics and EA practitioners,<sup>52</sup> but these problematic amendments have remained intact for over two decades. CELA therefore concurs that the *EAA* is undoubtedly in need of reform, but not further "streamlining."

The agenda for EA reform in Ontario has been previously outlined by CELA,<sup>53</sup> the Environmental Commissioner of Ontario,<sup>54</sup> the Minister's Advisory Panel on EA Reform,<sup>55</sup> the Auditor General of Ontario,<sup>56</sup> and other stakeholder groups. It is beyond the scope of this submission on the Environment Plan to discuss in detail the various legislative, regulatory and administrative reforms that are required in Ontario's EA program. At a minimum, however, Ontario's forthcoming EA reform initiative must include the following elements:

- retain the "Terms of Reference" ("TOR") mechanism under the *EAA*, while revising (or removing) the current Ministerial power to approve "focused" TORs which exclude key environmental planning considerations (e.g., "need", "alternatives to", and alternate sites);
- expand the types of projects that are subject to environmental assessment to include private activities that have the potential to cause adverse environmental effects and/or private activities that will take place on public lands or sensitive areas (e.g., new/expanded landfills, new/ expanded quarries, new/expanded mines);
- ensure meaningful public participation by re-introducing an intervenor/participant funding program (funded by proponents) and by referring environmental assessments, in whole or

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<sup>52</sup> Marcia Valiante, "Evaluating Ontario's Environmental Assessment Reforms" (1999), 8 JELP 215; Alan Levy, "Scoping Issues and Imposing Time Limits by Ontario's Environment Minister at Environmental Assessment Hearings" (2001), 10 JELP 147; Alan Levy, "A Review of Environmental Assessment in Ontario" (2002), 11 JELP 173; Richard Lindgren and Burgandy Dunn, *Environmental Assessment in Ontario: Rhetoric vs. Reality* (2010), 21 JELP 279.

<sup>53</sup> See <http://www.cela.ca/collections/land/environmental-assessment-ontario>.

<sup>54</sup> See Environmental Commissioner of Ontario, *Annual Report 2007-08* at 28-48; Environmental Commissioner of Ontario, *Annual Report 2013-14* at 132-139.

<sup>55</sup> Environment Minister's Environmental Assessment Advisory Panel – Executive Group, *Improving Environmental Assessment in Ontario: A Framework for Reform* (March 2005), Volume I, Recommendations 1-41.

<sup>56</sup> Auditor General of Ontario, *Annual Report 2016*, Section 3.05.

in part, to the Environmental Review Tribunal for public hearings upon request by residents, organizations, municipalities, First Nations, or Métis communities;

- establish a credible mechanism (e.g., Environmental Review Tribunal written hearing or reinstating the Environmental Assessment Advisory Committee) for determining public requests for Part II orders (aka “bump-up” or “elevation” requests) made under approved class environmental assessments and sectoral exemption regulations;
- ensure mandatory and meaningful cumulative-effects assessment;
- integrate climate change considerations into all environmental assessment activities under the *EAA*;
- ensure strategic or regional strategic environmental assessments occur before region-opening new developments (e.g., Ring of Fire) and/or apply to specific sectors (e.g., energy and other types of infrastructure planning); and
- enhance consultation protocols or processes for engaging with First Nations and Métis communities in a manner that aligns with the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior, and informed consent.<sup>57</sup>

Given the province-wide importance of EA reform, it goes without saying that any future changes to the current EA program should be developed by the Ontario government in consultation with all interested stakeholders, and must include meaningful public participation opportunities.

**Recommendation 1: The Environment Plan should be immediately revised to provide further details on the nature and scope of the EA changes under consideration by the Ontario government, and to contain a clear commitment to meaningful public engagement during the development of such changes.**

*(b) The Environment Plan’s Ambiguous Waste Reforms*

The Environment Plan states that the Ontario government is “looking at proposed ways” to address various aspects of solid waste management across the province. However, few specifics are provided in the Environment Plan that clearly define when and how these waste-related commitments will be implemented, if at all.

For example, the Environment Plan indicates that Ontario will “look for opportunities to enhance municipal say” in landfill siting and approval processes (page 44). In principle, CELA supports the creation of an appropriate “willing host” requirement for proposed waste disposal sites. However, the Environment Plan provides no details on how “municipal say” will be “enhanced” under the current statutes that govern the location, design, operation and closure of waste disposal sites. In our view, this omission is a major oversight that should be addressed in the next iteration of the Environment Plan.

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<sup>57</sup> See <http://www.cela.ca/publications/briefing-note-need-environmental-assessment-ontario>.

Similarly, the Environment Plan suggests that the province will expand green bin collection systems for food and organic wastes, and will develop a “proposal” to ban food waste from landfills (page 41). However, no timelines, targets or funding mechanisms are identified in relation to these measures.

In addition, these measures do not appear to be breaking any new ground since they have been well-discussed under the existing *Resource Recovery and Circular Economy Act, 2016* and the Waste-Free Ontario Strategy. CELA further submits that the Environment Plan should commit to the use of landfill bans not just for “food waste” but also for other organic waste, designated recyclables, household hazardous waste and other problematic products or packaging currently present in the waste stream.<sup>58</sup>

The Environment Plan also claims that Ontario will be required “to either focus on siting new landfills or look for new ways to reduce what we send to them” (page 40). In CELA’s view, this is a false dichotomy, as waste reduction is undoubtedly the highest and most important priority for Ontario residents and the province’s industrial, commercial and institutional sectors. On this point, CELA submits that the Environment Plan should expressly adopt the 3R’s hierarchy (reduce, reuse, recycle) as the principled basis for future provincial efforts to address the continuing proliferation of solid waste in Ontario. In short, Ontario should be aggressively pursuing waste avoidance programs, rather than making it faster or easier to obtain approvals for waste disposal sites.

In the recycling context, CELA notes that the Environment Plan merely “seeks” to obtain a “federal commitment to implement national standards to address recyclability for plastic products and packaging” (page 42). While a national regime to regulate the recyclability of products and packaging would be beneficial, the Environment Plan should commit Ontario to using its own suite of jurisdictional powers (e.g. *Resource Recovery and Circular Economy Act, 2016*) to enact and enforce provincial regulations in this key area. Waiting for the federal government to act in this matter is a recipe for inordinate delay.

We would add that Ontario’s future recyclability standards should not just focus on plastics as suggested by the Environment Plan. Instead, these standards should also apply to other waste materials which cannot otherwise be reduced or reused. In addition, the recyclability standards must require producers to reduce the amount, volume or concentration of toxic chemicals used in products and packaging in order to facilitate safe recycling. In this regard, CELA submits that Bill 66’s proposed repeal of the *Toxics Reduction Act* (which requires toxics reduction planning) is counterproductive and should therefore be withdrawn by the Ontario government.<sup>59</sup>

Alarming, the Environment Plan embraces “thermal treatment” as an option to “recover valuable resources in waste” (page 39). However, incineration does not “recover” resources – it attempts to recover energy from waste, and the “thermally treated” resources are lost once incinerated. More importantly, CELA regards thermal treatment as an environmentally unsound option that should

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<sup>58</sup> See <http://www.cela.ca/letter-waste-free-ontario-act>.

<sup>59</sup> See <http://www.cela.ca/SubmissionsOnBill66-Schedule5>.

be immediately jettisoned from the Environment Plan due to the prohibitive costs and environmental risks<sup>60</sup> associated with such facilities.

The Environment Plan's misguided endorsement of thermal treatment is also inconsistent with the Plan's claims about enhancing waste reduction in Ontario. Solid waste incinerators typically require a large continuous supply of materials (e.g. paper, plastics, aluminum, etc.) which should otherwise be reduced, reused or recycled. If the province is serious about working towards a "zero waste" future, then the valuable resources in the waste stream should not be burned in incinerators or buried in landfills.

CELA is disappointed that the Environment Plan "recognizes" that there will be "a need for landfills in the future" (page 44). This statement apparently (and mistakenly) assumes that no significant progress will be made in implementing the 3R's in the coming decades. As Ontario fully transitions from a consumer society to a conserver society, CELA acknowledges that some interim disposal capacity may be required to deal with residual waste. However, the Ontario government must take all reasonable steps to guard against creating excessive disposal capacity in both the short- and long-term.

In our view, this objective is best accomplished by revising the Environment Plan to include a provincial commitment to rigorously apply the EA process (e.g. Part II of the *EAA*) to new or expanded waste disposal sites (e.g. landfills, energy-from-waste facilities, hazardous waste sites, etc.). In particular, the EA process must require proponents to prove that there is a demonstrable public interest need<sup>61</sup> for the waste disposal project. Proponents should be compelled to carefully examine a reasonable range of alternatives to the project, and alternative methods of carrying out the project (e.g. alternative sites).

**Recommendation 2: The Environment Plan should be immediately revised to:**

- **specify how municipalities will be empowered to play a greater role in the planning and approval of waste disposal sites;**
- **commit to using landfill bans for organic waste, designated recyclables, and problematic products or packaging present in the waste stream;**
- **expressly adopt the 3Rs hierarchy (reduce, reuse and recycle);**
- **develop provincial standards regarding the recyclability and toxicity of products and packaging;**

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<sup>60</sup> See <http://www.cela.ca/article/canadian-environmental-protection-act-1999-first-cepa-review/pollution-prevention-options-in>.

<sup>61</sup> Ontario is currently proposing regulatory amendments that would require proponents of renewable energy projects to demonstrate that there is a need for the electricity to be produced by project: see Environmental Registry No. 013-3800. CELA sees no reason why this "need" requirement should not be extended to other energy projects (e.g. new or expanded nuclear generating stations). Since it is contrary to the public interest to approve an environmentally risky undertaking for which there is no demonstrable necessity, CELA submits that "need" should be proven by public and private proponents of waste disposal sites.

- **prohibit thermal treatment of solid waste and recyclables; and**
- **apply Part II of the *EAA* to all new or expanded waste disposal sites.**

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