



CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

April 24, 2007

BY FAX

Ms. Naomi Herold
Policy Analyst, Water Policy Branch
Ministry of the Environment
135 St. Clair Avenue West, 6th Floor
Toronto, Ontario
M4V 1P5

Dear Ms. Herold:

**RE: PROPOSED AMENDMENTS TO REGULATION 903 (WELLS)
EBR REGISTRY NOTICE NO. 010-0098**

Yesterday we wrote to you to provide our comments on the Ministry's proposed amendments to Regulation 903. As you know, the CELA submission expressed concern about the Ministry's institutional ability to conduct inspections and enforce Regulation 903 in a timely and effective manner. Accordingly, CELA's very first recommendation to the Ministry was framed as follows:

CELA RECOMMENDATION #1: The MOE must immediately rehire full-time, dedicated well inspectors to respond to well-related complaints, and to conduct announced and unannounced well inspections under Regulation 903. The MOE's inspection and enforcement program for Regulation 903 must receive adequate technical resources, appropriate policy direction, and sufficient fiscal support in order to be fully functional and effective in protecting the environment and public health.

Today the Environmental Commissioner of Ontario released a Special Report to the Ontario Legislature which concluded, among other things, that the Ministry's capacity to fulfill its mandate to protect the environment and public health has been greatly diminished as a result of staff reductions, budget cutbacks, and other administrative and policy changes dating back to the 1990s.¹

It is particularly significant (and not unsurprising) that the Environmental Commissioner specifically highlighted the Ministry's Regulation 903 regime as a "case study" where this diminished capacity has been readily apparent in recent years.²

¹ ECO Special Report, *Doing Less with Less: How Shortfalls in Budget, Staffing and In-House Expertise are Hampering the Effectiveness of the MOE and MNR* (April 24, 2007).

² *Ibid.*, MOE Case Study #3: Water Well Inspections (pages 35 to 38).

For example, the Special Report noted that:

- the Ministry positions of full-time water well inspectors and chief water well inspector were eliminated over a decade ago;
- the Ministry's current "Water Well Business Unit" does not conduct unannounced visits to well drilling or abandonment operations;
- there were serious shortcomings in the Ministry's 2006 "sector sweep" to assess compliance with Regulation 903 (i.e. wells under construction were not inspected); and
- the Auditor General of Ontario and an expert panel have also identified serious systemic gaps in the Ministry's well inspection program.

In light of these and other findings, the Environmental Commissioner recommended that:

Given the high profile of well water quality concerns and the difficulties in remediating contaminated groundwater sources, it would be prudent for the Ministry to conduct:

- random testing of private drinking water wells for water quality;
- random, unannounced inspections of water well construction, testing, repair or abandonment procedures; and
- on-going spot-checks of well drillers for licencing and training certificates, record keeping, and provision of records to both MOE and the well owner...

With hundreds of thousands of active and abandoned wells in the province, and with hundreds of well contractors operating in the field, MOE should have greater capacity to carry out well inspections (emphasis added).³

In short, CELA submits that today's Special Report by the Environmental Commissioner provides independent corroboration of our concerns regarding the Ministry's current inability (or unwillingness) to undertake appropriate inspection and enforcement activities in relation to Regulation 903.

Accordingly, we call upon the Ministry to accept and act upon the recommendations of CELA and the Environmental Commissioner regarding the clear and compelling need to restore the Ministry's capacity to ensure compliance with Regulation 903 and, more importantly, to safeguard the environment and public health.

³ *Ibid.*, pages 37-38.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read 'R. Lindgren', with a long horizontal stroke extending to the right.

Richard D. Lindgren
Counsel

CELA Publication 574sup

cc. The Hon. Laurel Broten, Minister of the Environment
Gord Miller, Environmental Commissioner of Ontario