

Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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Submissions of the
CANADIAN ENVIRONMENTAL LAW ASSOCIATION
to the
STANDING COMMITTEE ON RESOURCES
DEVELOPMENT
respecting
ENVIRONMENTAL POLLUTION
FROM
FORESTRY OPERATIONS:
A LEGACY OF REGULATORY NEGLECT

Committee Oversight Hearings
Legislative Buildings, Queen's Park
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by

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I. INTRODUCTION

A. Rationale for considering pollution from forestry operations at this hearing.

With the committee's indulgence, I would like to begin with two quotes which were made at a March 1978 Ontario Conference on Forest Regeneration¹ as a basis for linking your committee's hearings on pollution, from the pulp and paper industry, with CEPA's submissions on pollution from forestry operations generally.

The first quote is from a Vice-President of woodlands operations for Abitibi-Price:²

"As a manager of a woodlands organization it is my basic responsibility to deliver an adequate supply of fibre to meet the mills' requirements on an annual and long-term basis at competitive costs."

The second quote is from a registered professional forester at Lakehead University:³

"I believe that a problem in the industry has been, and is, the domination of woodlands operations by mills. These "profit centres" under the direction of accountants, chemists, and engineers have made woodlands operations and departments as "cost centres", mere lackies. Within those departments and operations, the only concern under this condition is the production of wood volumes at minimum current cost. This domination has not encouraged the exercise of imagination or innovation in the optimum management and utilization of all of the values of the Boreal Forest."

While this committee has met to review the existing regulatory situation in relation to the pulp and paper industry, we believe it should also devote its attention, to the extent feasible, on environmental disruption from poor forestry practices as well. With some exceptions, and until very recently, this has been an area that has received very little executive or parliamentary investigation in Ontario. We submit that the above quotes suggest very strongly the ties that bind the two industries in environmentally unsound practices and that make investigation of them at the same time both

logical and appropriate. Moreover, review of forestry practices and controls is also timely in light of the recent (December 1978) federal-Ontario agreement which will funnel \$60 million into the building of new bush roads to extract timber in remote forested areas over the next five years.⁴

II. THE NATURE OF THE PROBLEM

A. Forest Management Activities of Concern

The principal areas of forest practice that we would like to briefly review with the committee from a regulatory perspective are:

- uncontrolled clearcutting;
- poor practices respecting construction, use, maintenance and abandonment of logging roads;
- log transport methods; and
- inadequate regeneration.

Because of limited time and resources we will not deal with certain other areas of concern in any detail such as the use of chemicals, including pesticides, fertilizers and fire retardants.

B. Resulting Environmental Impacts

The above activities can result in numerous adverse environmental impacts including:⁵

- soil erosion;
- water pollution due to stream siltation and sedimentation (and associated nutrient and chemical inputs to water bodies);
- decreased forest productivity where nutrient release as a result of cutting operations is not quickly controlled through adequate revegetation efforts;
- loss or disruption of wildlife habitat;
- adverse impacts to fish and fish spawning areas;
- and related impacts.

Moreover, Ontario is certainly no stranger to environmental damage caused by poor forestry practices. For example, a recent study for the federal

government indicated in part that:⁶

"...Uncontrolled clear-cutting in northern Ontario, where the practice has been to remove all merchantable timber as it is made accessible by a developing road system, has resulted in wide-spread areas of denudation. In some regions, contiguous clear-cuts of up to 8-10,000 ha have been reported."

The report also notes that: "If it is properly applied, clear-cutting does not lead to soil erosion, nutrient depletion, damage to wildlife habitat or stream deterioration".

I repeat: If it is properly applied.

We submit that the causes of this collapse in proper forest management are attributable, in part, to an outdated regulatory program; one which has either never adequately considered environmental pollution from forestry practices to be a legitimate concern; or if it has, has failed up to now to develop proper tools of control. Prospectively, this may change with the application of the Environmental Assessment Act to forest management practices particularly on Crown timber lands. However, we will have more to say about that in a few minutes.

III. THE NATURE OF EXISTING GOVERNMENT REGULATION

We believe that the appropriate place to begin is with a brief review of the existing regulatory laws. The key statutes for this purpose at the federal level are the Fisheries Act and at the provincial level, The Crown Timber Act, The Environmental Protection Act and The Ontario Water Resources Act.

A. Federal laws

1. The federal government has a very limited regulatory role in Ontario with respect to controlling water pollution from forested areas. However, a number of Fisheries Act provisions (this Act is administered in Ontario by the Ministry of Natural Resources) apply to such areas to the extent that fish may be adversely affected by forest management activities.

The Act makes it an offence for any person engaged in logging, lumbering and land clearing, or other operations to put any slash, stumps, or other debris into any water frequented by fish, or in a place where it is likely to get into such water. The Act does not establish a permit program in conjunction with this prohibition. This section has not generally been used in Ontario.

Recent amendments to the Act broaden the definition of fish habitat, and enable the Minister to require plans and specifications for existing and proposed activities and to reject a proposal or order that it be modified with the approval of Cabinet. (It is not clear whether an Ontario agency could invoke these provisions.) These provisions have not been used in Ontario.

It would also be open to the federal government or the appropriate Ontario agency to utilize Section 33(2) - the deleterious substance section - to prosecute for stream sedimentation arising from logging, lumbering and other land clearing operations. While this section has been used in other provinces, it has not generally been invoked in Ontario.

2. DREE Fiscal Assistance

Under the Canada/Ontario General Development Agreement program, the federal Department of Regional and Economic Expansion will become increasingly involved in financial assistance initiatives in support of the forest industry in northern and eastern Ontario.⁷ Future subsidiary agreements arising out of this program will include surveys, silvicultural camps and construction of forest access roads.

B. Provincial laws

1. The Crown Timber Act

Licences to cut Crown timber when tenders are called, or in a salvage operation or in certain other circumstances are authorized under this

Act, which is administered by MNR. Crown management units on public lands, or on other lands where trees are vested in the province, may be designated, and MNR may enter into agreements with any person for the supply of Crown timber.

In conjunction with these provisions licensees must furnish to MNR for approval a forest management and/or operating plan showing the proposed operations and their conformance with authorized MNR manuals on good forest management practices. Each year licensees must submit to MNR for approval a plan outlining prospective cutting operations before they've commenced. Annual cutting operations must conform to the approved annual plan.

1978 amendments authorize MNR to enter into regeneration agreements with a licensee for the promotion and maintenance of the productivity of the licensed area by establishing, regenerating and tending forests and employing silvicultural cutting systems to regenerate forests.

2. Other Forestry Statutes

Other MNR administered Acts deal with roads on public lands; control of cutting on provincial park lands; the planting of nursery stock or stand improvement on private, local government or Conservation Authority lands; and the development of municipal tree cutting by-laws. Provincial grants to localities and agreements with land owners may be entered into by MNR for forestry purposes, which are defined to include protection against floods and erosion.⁸

3. Environmental Protection Statutes

Prior to the enactment of the Environmental Assessment Act, the two principal environmental statutes were the Ontario Water Resources Act and the Environmental Protection Act.

These statutes generally make it an offence to discharge anything to surface or groundwaters that may impair water quality (OWRA) or emit a contaminant into the natural environment that is likely to cause impairment for any use that the environment can be made of. (EPA).

Generally, these prohibitions have not been used with respect to forestry operations. Neither statute requires that forestry operations obtain environmental approvals before proceeding.

IV. WHY AND HOW WE ARE FAILING

With the array of laws listed above "why are we failing?" There are at least three problems with the current regulatory structure which can be seen to have contributed to a failure to control the environmental impacts of logging operations, particularly on crown lands.

- (1) The silence of logging statutes (eg. Crown Timber Act) on environmental issues;
- (2) The policies surrounding MNR licensing, enforcement and regeneration;
- (3) The ineffectiveness or inapplicability of existing environmental laws to the problem.

For example, a 1977 Environment Canada-International Joint Commission sponsored study on Great Lakes water pollution⁹ concluded that Ontario legislation, on its face and as applied, was not adequate to control water pollution from logging operations. Ontario legislation, principally the Crown Timber Act,

- does not create a duty to control water pollution from forestry operations (indeed is silent on the subject)
- Crown timber approvals have not normally contained provisions setting down how the licensee is to control erosion and sedimentation during cutting and related operations
- while regeneration was seen by MNR personnel to be a key for local water quality protection, regeneration on Crown management units reviewed was inadequate, in part because of insufficient government field resources as well as due to the clear-cutting practices of some logging companies
- erosion and sediment controls for Crown timber road construction have been difficult to establish on the remote network of such roads; generally such controls are still in their infancy in Ontario.¹⁰

The public has more recently seen additional examples of enforcement procedures against the logging industry. In August 1978, the then Minister of Natural Resources, Frank Miller reduced, against the advice of MNR staff, a fine levied against Great Lakes Paper Co. Ltd. for improper tree-cutting practices - including cutting trees where they did not have permission to do so - from \$20,000 to \$3,000. Instead of paying the full fine, the company is to undertake forest regeneration. MNR officials are to monitor the company's work.¹¹

While the principle of requiring industries to clean up is a fine one (or in this case undertake regeneration) the government did not undertake to publicly report on the results of the company's regeneration efforts. Indeed, without access to government field reports in this or related situations it would normally be difficult, if not impossible, for any member of the public to prosecute the company for pollution under an environmental statute (assuming the absence of further government action).

The fundamental flaws of existing environmental statutes (i.e. OWRA and EPA) in relation to forestry practices are:

- no environmental approvals are required before forestry operations may commence or continue
- reactive controls (i.e. prosecutions, control or related orders etc.) are rarely, if ever, used.

The result is that there is no systematic preventive control scheme (e.g. approvals, permits, licences, etc.) for the forestry industry in respect of environmental matters.

V. THE GOVERNMENT'S PRESCRIPTION FOR REFORM

A. The Environmental Assessment Act and Forest Management

With the passage of The Environmental Assessment Act, 1975 the province, in theory, finally has a statute which can potentially remedy many of the problems described above.

I'm sure I don't need to restate the basic procedures of that Act for this Committee. Before receiving an approval to proceed or continue, proponents of an undertaking that is subject to the Act must submit an environmental assessment to the MOE, outlining the project, its environmental impacts, mitigation measures, alternative modes of accomplishing the projects' ends and alternatives to the project. This document, together with an MOE review of it, must be made public and may be the subject of a public hearing before a decision is made on the undertaking.

While this is certainly an improvement over the past, 3½ years after the Act's enactment its potential in reforming forestry practices remains more potential than real.

B. Problems in Implementation of the Act to Forestry Practices

1. Exemptions

One of the problems CELA has experienced with the Act generally and in relation to forest practices, is getting anything to be subject to it. (The single exception to date is the Reed proposal for a licence for logging 19,000 sq. miles of Crown land. However, there are already 97,000 sq. miles of Crown land under timber licence which are not subject to the Act.) The Environment Minister's sweeping authority under section 30 to exempt undertakings temporarily or permanently from the Act's provisions without a hearing, has arguably harmed the case for its being a comprehensive environmental planning tool. Moreover, the Act is rapidly becoming known as the most advanced piece of unused environmental legislation in the free world. Indeed, it already goes by another name: The Environmental Exemptions Act.

The problem of exemptions is nowhere better evidenced than under forest management on Crown lands. Originally exempted in 1976 from the Act by Ministerial order¹² to July 1, 1978, forest management activities were later exempted¹³ again to January 1, 1980.

Ironically, among the reasons given in the 1976 order for exempting forest management temporarily from the Act was "protection, conservation and wise management of the environment will be sufficiently provided for by the use of MNR approval and review proceedings..." Presumably, these were not the same mechanisms the 1978 federal government study⁶ found to be resulting in "uncontrolled clear-cutting in northern Ontario".

Another reason given in the 1976 order for exempting forest management temporarily from the Act was "MNR requires a period of time to implement environmental assessment procedures for the undertaking as well as for other MNR undertakings". Yet, if the committee will recall the types of problems with current forest practice we outlined initially, such as soil erosion and stream siltation, these are hardly categories of problems which require a full-blown environmental assessment to find solutions. Indeed, the 1978 federal study⁶ indicated, for example, with respect to road construction:

"In most situations the detrimental effect of road construction can be reduced or eliminated by paying greater attention to soil characteristics, by avoiding high hazard areas and by improving construction methods. The required knowledge is already available."

Moreover, why couldn't the EAA apply to all Crown timber licences and each annual cutting operation plan now, at least with respect to control of erosion, sedimentation and related matters while forest management itself stays otherwise exempt until 1980. This was done with respect to Ontario Hydro transmission line construction practice guidelines, as approved by MOE, even though current Hydro projects remained otherwise exempt.¹⁴ MNR's Design Guidelines for Forest Management⁵ which cover many facets of erosion and sediment control have been available for most of the decade. At least with these aspects of forest management subject to the EAA, more information would potentially be available to the public now about how well the forest environment was being protected as well as providing greater citizen enforcement opportunities.

We can only conclude that MNR has been most effective at using section 30 exemptions in its capacity as proponent under the EAA. It's arguable whether the forest environment has benefited from these actions.

2. Class vs. Site Specific Environmental Assessments

It is also anticipated that when MNR submits its environmental assessment for forest management it will be seeking approval of a class environmental assessment. This will mean that a set of general procedures will be proposed which, when approved by MOE, will then be used as a guide for the preparation of individual forest management plans on Crown land. In practice, this could mean that possibly the only hearing the public will have on forest management will be the one on whether to approve the class environmental assessment or not. Thereafter, depending on the conditions of approval to the class environmental assessment, getting a hearing on a specific Crown licence application could possibly be a far more difficult exercise than provided for in the Act itself, despite the fact that the disposition of substantial public land could be at issue in many instances.

A further question is whether, for certain types of environmental pollution associated with forest practices, such as soil erosion and stream sedimentation, general conclusions under a class assessment will be adequate and enforceable substitutes for site specific sediment controls conducted under other regulatory mechanisms. This is discussed in greater detail under Appendix I to these submissions.

V. CELA'S PRESCRIPTION FOR ACTION - RECOMMENDATIONS

In light of the above matters and concerns, CELA respectfully submits the following recommendations for the consideration of the Standing Committee

on Resources Development:

A. Environmental Field Reports

Environmental field inspections on all licensed Crown timber areas should be made at least once every month, environmental field reports prepared, and such field reports should be available during normal business hours for review and copying at reasonable cost by any member of the public. Such review and copying may take place at either the Toronto offices of the Ministries of Environment and Natural Resources, or the regional or local district office of the Ministry nearest the timber licensed site. It should be an offence, subject to summary conviction, under the Environmental Assessment Act to either fail to produce such an environmental field report, or fail to produce it within a reasonable period of time subsequent to the request without legitimate excuse.

B. Control of Erosion and Sedimentation

Methods, processes and procedures for controlling soil erosion and stream sedimentation from forest practices should be required now under all new or renewed Crown timber licences, forest management, operating and annual plans and made subject to the terms of the EAA until such time as forest management activities are generally subject to the Act.

C. Control of Exemptions

There should not be any more exemptions or extensions to exemptions under the EAA for forest management activities unless hearings under the EAA are first held and a report made public respecting the advisability of the proposed exemptions in light of the propose section of the Act.

D. Environmental Right of Action

Where the government wishes to use a class assessment to cover forest management activities the Legislature should propose an environmental right of action amendment to the EAA permitting any member of the public, without having to demonstrate a special financial or proprietary interest, to seek an injunction in the Supreme Court of Ontario to stop environmental disruption attributable to logging or related activities alleged to be occurring notwithstanding a class environmental assessment approval or exemption.

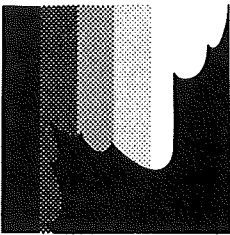
NOTES

1. Ontario Ministry of Natural Resources. Proceedings of Ontario Conference on Forest Regeneration. March 29-31, 1978. Thunder Bay, Ontario.
2. Ibid. pp. 74-75.
3. Op. Cit. p.67.
4. "Forestry deal signed for Northern Ontario", The Globe and Mail, December 11, 1978.
5. See generally: (1) T. Singh and Y. Kalra "Impact of pulpwood clearcutting on stream water quality in west central Alberta"; R. Rothwell, "Suspended sediment and soil disturbance in a small mountain watershed after road construction and logging"; E. Telfer, "Impact on wildlife of land management alternatives for the Alberta East Slopes" and R. Davis "Controlling the water quality impact of timber harvesting operations in the Eastern Slopes", in Canadian Forestry Service, Alberta Watershed Research Program Symposium Proceedings, November 1977. (2) Ontario Ministry of Natural Resources. Fisheries Branch. An Annotated Bibliography on the Effects of Roads on Aquatic Systems 1978. (Especially references 17, 22, 30, 36, 42, 66, 77, 94, 111 on the effects of logging roads). (3) Ontario Ministry of Natural Resources. Design Guidelines for Forest Management. Undated. (4) Ontario Ministry of Natural Resources. Fisheries Branch. Better Streams for More Trout. 1975
6. Forest Management in Canada. Prepared for the Forest Management Institute, Canadian Forestry Service, Fisheries and Environment Canada. By F.L.C. Reed & Associates Ltd. January 1978. pp. 44 and 134 (Volume 1).
7. Op. cit. See footnote #4.
8. See generally The Public Lands Act, The Provincial Parks Act, The Woodlands Improvement Act, The Trees Act and The Forestry Act.
9. Castrilli, J.F. Control of Water Pollution from Land Use Activities in the Canadian Great Lakes Basin: An Evaluation of Legislative, Regulatory and Administrative Programs. Submitted to International Joint Commission - Pollution from Land Use Activities Reference Group. (IJC - PLUARG) Task Group A (Canada). Windsor, Ontario. 1977. 460 pp.
10. As of 1974 there were some 12,000 miles of MNR and forest industry built and maintained forest access roads in Ontario. See Ontario Ministry of Natural Resources. Timber Sales Branch. The Forest Industry in the Economy of Ontario. 1977.
11. "Forest firm's \$20,000 fine cut to \$3,000 by minister", The Globe and Mail, August 16, 1978.
12. Order-in-Council 2891/76 respecting Ministry of Natural Resources exemption (No. 7).
13. Order-in-Council 1748/78 respecting Ministry of Natural Resources exemption (No. 11).
14. Order-in-Council 2887/76 respecting Ontario Hydro exemption (Nos. 8, 9, 10, 11).

APPENDIX I

ENVIRONMENTAL ASSESSMENT LAW MAY NOT BE AN EFFECTIVE SUBSTITUTE FOR
SEDIMENT CONTROL LAW.

Through the use of individual and class environmental assessments under the EAA, Ontario will attempt to achieve ancillary benefits of sediment control for a number of land use categories, particularly transportation corridors and forested areas. The use of class environmental assessments will especially be employed for the many smaller projects under these



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Press Release

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LOGGING PRACTICES OVERDUE FOR ENVIRONMENTAL CONTROLS, LAW GROUP ARGUES

Toronto ---

Despite the availability of proven land management techniques, government and logging industry resistance have kept new laws for preventing environmental damage from poor forestry practices from being used for years, argued the Canadian Environmental Law Association today in a brief to the Standing Committee on Resources Development.

"Poor forestry practices such as uncontrolled clearcutting, sloppy road construction, improper use of heavy machines and equipment and inadequate regeneration can lead to soil erosion, stream sedimentation, reduced forest productivity, and loss of fish and wildlife habitat, which existing laws have generally been incapable of dealing with" stated Joe Castrilli author of the association submissions.

The 1975 Environmental Assessment Act was intended to remedy such problems. However, after two eighteen-month government exemptions, forest management on public (Crown) lands will not be subject to the Act before 1980.

"The Act is quickly developing a reputation for being one of the most advanced pieces of unused environmental legislation in the free world", the association brief states.

The association brief proposes several recommendations to deal with this situation including:

- periodic government preparation and public availability of environmental field reports on Crown timber logging operations;
- immediate application of the Act to forest practices that lead to accelerated erosion and stream sedimentation as control techniques already exist;
- no further forest management exemptions to the Act unless public hearings are first held;
- amendments to the Act to grant any member of the public the right to seek a court injunction where environmental damage is occurring from logging operations on Crown timber lands despite government class activity approvals or exemptions.

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