

## **Chapter 11 The Ministry of the Environment Budget Reductions**

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## Chapter 11 The Ministry of the Environment Budget Reductions<sup>1</sup>

### 11.1 A Background to the Reductions

Beginning in 1992–93 and continuing until 1997–98,<sup>2</sup> the budget of the Ministry of the Environment (MOE) underwent very substantial reductions. The first series of reductions occurred in the early to mid-1990s. Between 1991–92 to 1995–96, the MOE's annual budget estimates fell by approximately 30% and total annual expenditures decreased by about \$210 million.

After the election of the new government in 1995, there were further reductions. Shortly after the election, there was a reduction to the MOE's budget of \$30.8 million. In August 1995, the central agencies of the government<sup>3</sup> directed the MOE to develop a plan for reducing its budget by a further 40% for 1996–97, and then by another 20% for 1997–98. These reductions added up to \$200.8 million over the two-year period. In January 1998, an internal MOE document reported that the ministry had been “particularly hard hit” in comparison with other ministries. It stated that since 1995–96, the MOE budget had been reduced by 48.4%.<sup>4</sup>

The budget reduction targets for the MOE were not set by that ministry. They also did not involve a review of the question of whether the reductions could be achieved without sacrificing the MOE's capacity to fulfill its statutory mandate. Rather, the reduction targets were initiated by the central agencies, and the MOE's responsibility was to develop strategies for reaching those targets.

With one exception, there was no negotiation between the central agencies and the MOE about the amount of the targeted budget reductions in view of the ministry's statutory responsibilities. The sole exception occurred in 1998, when the central agencies were proposing further reductions. The Minister of the Environment at the time, Norman Sterling, was advised by his staff that the MOE had reached the point where further budget reductions would affect

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<sup>1</sup> I did not address this topic in Chapter 9 of this report, when dealing with the role of the MOE, because the budget reductions involved decisions made by the Cabinet and not only the MOE.

<sup>2</sup> In this chapter, ranges of years indicate respective fiscal years.

<sup>3</sup> The Ministry of Finance, the Management Board Secretariat, the Cabinet Office, and the Premier's Office.

<sup>4</sup> This calculation was adjusted to remove the skewing effect resulting from the removal of capital and water grants. At the end of the chapter, I have included three tables summarizing the budget constraints, financial resources, and staffing complement of the MOE in the 1990s.

the delivery of core programs. In response, Minister Sterling negotiated with the Management Board Secretariat and with the Cabinet to reduce the impact by using non-tax revenue, generated by the MOE, to meet the budget reduction target.

The provincial government developed a new process for implementing budget reductions across all ministries beginning in 1996–97. Each ministry had to complete a form from the Management Board of Cabinet to show how that ministry would implement its budget reduction strategy. This became part of the ministry's business planning process, whereby it would complete a business plan for the ultimate approval of the Cabinet, on the recommendation of the Management Board of Cabinet and the Policy and Priorities Board of Cabinet.<sup>5</sup> For the MOE, one of the requirements of the business plan form was to outline the impacts of the budget reductions on the environment and on public health.

The first business plan prepared by the MOE was signed by the Minister of the Environment at the time, Brenda Elliott, on January 22, 1996. It was approved at a joint meeting of the Management Board of Cabinet and the Policy and Priorities Board of Cabinet on February 8, 1996, and ultimately by the Cabinet on February 28, 1996. The approval by the Cabinet gave the authority by which the MOE's budget was cut by \$200.8 million and by which, in time, its total staff was reduced by more than 750 employees. As I discuss below, the business plan outlined risks to the environment and human health associated with the budget reductions.

## **11.2 The Impacts of Budget Reductions on the Events in Walkerton**

In this section, I comment on the effect of the significant budget reductions on what happened in Walkerton. Before doing so, I will outline some general issues about budget reductions and discuss how I propose to address the topic.

Over the course of the Inquiry, it became evident that the impact of budget reductions was a prominent concern for many people. The reductions in the

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<sup>5</sup> The Policy and Priorities Board of Cabinet is chaired by the Premier and is generally composed of the chairs of the Cabinet's policy committees. The Board supervises the strategic policy of the government.

MOE's budget were substantial, and the impacts were wide-ranging. It should be kept in mind, however, that the purpose of the Inquiry is not to review the broad impact of budget reductions on the MOE or on the provincial government as a whole. The purpose of this report is to address the budget reductions only to the extent to which they may have had an effect on the tragedy in May 2000.

I conclude that the budget reductions had two types of effects on the tragedy in Walkerton. First, with respect to the decision to privatize the laboratory testing of drinking water samples, and especially the way in which that decision was implemented, the budget reductions are connected directly to the events of May 2000. Second, in the case of the MOE's approvals and inspections programs, the budget reductions are indirectly linked to the events in May 2000 in that they made it less likely that the MOE would pursue proactive measures that would have prevented or limited the tragedy.

In Chapter 10 of this report, I discussed the decision in 1996 to discontinue all routine testing of water for municipalities at provincial laboratories – after which the large majority of municipalities, including Walkerton, had to use private sector laboratories for these tests. This decision resulted directly from the decision to reduce the MOE's budget.

As I mentioned in Chapter 10, I do not comment on the merits of the government's decision to privatize laboratory testing in this report. However, it is my opinion that the way in which the decision was implemented was deficient in that the associated risks to public health were not properly analyzed or managed, repeated warnings about the risks were not acted upon, and the standards that applied to private laboratories were not properly updated. In part, this may have occurred due to the speed with which the decision to discontinue laboratory testing was implemented, which in turn stemmed from the speed with which the Cabinet required the budget reductions from the MOE. As I have discussed, the failure to enact a notification regulation very likely resulted in an additional 300 to 400 illnesses in Walkerton, although such a regulation would probably not have prevented any deaths.

The second type of effect of the budget reductions was to reduce the likelihood that the operating problems at the Walkerton PUC would be detected, so that corrective action could be taken. To have detected those problems and initiated the necessary corrective action would not have required a superhuman effort on the part of the MOE or its personnel. However, it would have required

the MOE to be proactive, especially in its approvals and inspections programs as they applied to Walkerton. The budget reductions reduced the MOE's ability to be proactive in this regard. I note that in its Statement of Environmental Values, the MOE commits to taking a proactive approach in fulfilling its statutory mandate of environmental protection.

As I discussed in Chapter 9 of this report, the MOE approvals program did not systematically review existing Certificates of Approval, like the one issued for Well 5, to determine if operating conditions for treatment and monitoring should be added, especially after the 1994 amendments to the Ontario Drinking Water Objectives.

After the budget reductions, the staff in the Approvals Branch was reduced, albeit not as substantially as staff in other areas of the MOE. Nonetheless, the introduction of a systematic program to reach back and review all Certificates of Approval to determine if conditions should be attached would have taken time and resources. I have concluded that the MOE should have implemented a program of this nature. The budget reductions made it less likely that the MOE would do so.

I have also found that the MOE should have conducted a follow-up to its 1998 inspection to ensure that the Walkerton PUC complied with MOE requirements for chlorination and monitoring. With the proper follow-up, these proactive measures would likely have resulted in the PUC's adoption of chlorination and monitoring practices that would in turn very likely have substantially reduced the scope of the outbreak in May 2000.

If a follow-up inspection of the PUC had been carried out after the 1998 inspection, it would have been conducted by the MOE's Owen Sound office. There is no direct evidence that the reason that such a follow-up inspection was not done was related to budget reductions. Indeed, the number of staff in the Owen Sound office had not been significantly reduced as a result of the budget reductions. However, it is clear that workloads had increased and that the amount of time available for overseeing municipal water systems had decreased after the reductions began in 1996. For example, at that office, from 1994–95 to 1999–2000, the number of planned annual inspections of municipal water systems fell from 25 to 10. The number of actual inspections fell from 16 to 10. The amount of time that staff in the office spent on communal water – including inspections, abatement, and enforcement – fell by about

one half during the five years of budget reductions leading up to the tragedy.<sup>6</sup> In fiscal year 1999–2000, the entire cohort of environmental officers in Owen Sound would have been able to allot, on average, 7.7 hours to supervising each of the 54 municipal water systems in their district.<sup>7</sup> I am satisfied that this decreased staff time flowed from the budget reductions and the resulting work prioritization programs.

I am not certain that there would have been a follow-up to the 1998 inspection had the budget reductions not occurred. However, it is fair to say that the budget reductions made a follow-up inspection less likely.

After the substantial reductions to its budget in the 1990s, and especially after 1996, it was unlikely that the MOE would take these proactive measures in the approvals and inspections programs. To do so would have required it to propose and implement new initiatives – an unlikely step at a time when its budget was being reduced by nearly 50%. The overall approach during these years was to try to maintain existing programs to the extent possible, not to expand those programs to address new issues, however important such issues might be. Put another way, the goal was not to fill in any gaps that existed, but rather to stop those gaps from getting any wider. The orientation of the MOE's offices to problems associated with municipal water systems became more reactive than proactive.

Thus, one effect of the budget reductions was that MOE put less priority on its role in overseeing municipal water systems. The Inquiry heard evidence that starting in 1995, the number of inspections conducted by the MOE decreased dramatically, as did the number of site visits and other contacts between the MOE and municipal water systems.

At the Inquiry, it was argued by some parties that the budget reductions contributed to other problems in the MOE that had an effect on the events of May 2000. Unquestionably, the reductions increased workload pressures, caused MOE personnel to change the way they prioritized and targeted their time, and created significant morale problems among MOE staff. However, on the

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<sup>6</sup> Specifically, the amount of time dedicated to the communal water program by staff at the MOE's Owen Sound office fell from 10.17% in 1994–95 to 5.12% in 1999–2000.

<sup>7</sup> This calculation assumes a 36-hour workweek, 48 weeks per year, with 4.8 environmental officers dedicating 5% of their time to the 54 water systems as part of the communal water program. I note that the number of environmental officers at the Owen Sound office fluctuated between four and six during 1999–2000.

evidence, I am not satisfied that there is a sufficient connection between the budget reductions and any other problems in the MOE that warrant comment by me. I will be addressing the budget reductions in the course of the Part 2 report of this Inquiry, and I will be making recommendations concerning the need to ensure that the MOE has adequate resources to allow it to carry out its role as a regulator of drinking water systems.

I now turn to a review of the budget reductions and the process by which they were carried out.

### **11.3 Warnings About the Impacts**

On many occasions during the MOE's first business plan process in 1995 and 1996, ministry staff warned senior management, the Minister of the Environment, and the Cabinet that the impact of the budget reductions being imposed on the ministry presented risks to the environment and public health.

Several points about the possible impacts of the proposed reductions that are found in the warning documents are significant in relation to Walkerton. Warnings that the reductions would result in increased risks to the environment and human health included suggestions that the MOE would become more reactive than proactive; that the MOE's ability to monitor long-term threats to the environment would be reduced; and, importantly, that increased environmental risks would result from an inability to conduct proactive inspections<sup>8</sup> or to detect or control improper or illegal actions because of decreased compliance and enforcement activities.

The evidence at the Inquiry disclosed that the budget reductions did in fact result in fewer proactive inspections, as had been predicted in the warnings made by the public officials. James Merritt, a former MOE assistant deputy minister of the Operations Division, testified that staff increasingly found much of their day taken up with "reactive work," leaving little time for proactive work such as planned inspections and inspection follow-ups. Robert Shaw, the regional director of the MOE's Central Region, confirmed that the cutbacks reduced the MOE's ability to conduct proactive work. He testified that the reduction in staffing made it difficult to do more than just reactive work.

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<sup>8</sup> I note that the documents did not refer specifically to water treatment plant inspections.

The business plan approved by the Cabinet identified several key impacts resulting from the reductions, including the following:

- The MOE's ability to ensure compliance with environmental standards and regulations would be reduced as a result of several factors, including a reduction in the proactive inspection of industries, a reduction in the MOE's scientific and technical expertise, and delays in developing standards and in providing expert advice on the risks of water contamination.
- The risks to the environment and human health might increase as a result of improper or illegal actions that were neither detected nor controlled through orders and prosecutions because of a decrease in compliance and enforcement activities.
- The level of front-line service would be reduced as a result of slower response times to complaints, a focus on compliance activities rather than on providing assistance with abatement actions, having less information available to provide when responding to inquiries, and reduced technical assistance being given to municipalities that were seeking to optimize their water and sewage treatment facilities.

A Management Board document dated February 5, 1996, provided advice on the MOE's business plan. In accordance with government policy, this document was prepared by Management Board analysts after reviewing the business plan proposed by the MOE. It was presented to a joint meeting of the Management Board of Cabinet and the Policy and Priorities Board of Cabinet. One impact referred to in the document was the increased risks to human health and the environment that might occur as a result of the business plan. After summarizing the impacts, the document stated that the plan provided a "[r]ealistic assessment of impacts." The document also referred to the proposal to close the MOE laboratories in order to reduce the budget, and stated that issues such as the accreditation of private laboratories still needed to be resolved.

#### **11.4 The Cabinet Decision and the Lack of a Risk Assessment**

The MOE's business plan, with its discussion of associated risks, was approved by the Cabinet on February 28, 1996. As I have mentioned, those risks were significant. The business plan warned of a reduced capacity in the MOE to



detect or control violations of environmental standards because of slower response times, less information available for responding to inquiries, and reduced technical expertise.

Despite having knowledge that there could be risks, no member of Cabinet or other public servant directed that a risk assessment and management plan be conducted to determine the extent of those risks, whether the risks should be assumed, and if assumed, whether they could be managed. Although evidence was given at the Inquiry by senior civil servants, the Minister of the Environment, and the Premier that the risks were considered and that conclusions were reached that the risks were considered manageable, no analysis appears to have been made of the specific nature, scope, or extent of the risks or of how they could be managed.

Before the budget reductions, the MOE had done a functional analysis of the various work areas in the ministry. After the reductions, the MOE developed policies such as the Delivery Strategies, which prioritized the work to be done. But such analyses and policies cannot be considered to be risk assessment plans. The functional analysis was a planning tool aimed at providing an accurate picture of how and where resources were being used. The Delivery Strategies was a work-plan tool: it prioritized work for the MOE's employees. It was developed after the reductions were already in place, and it did not examine the risks arising from the reductions, whether the risks should be assumed, or how the specific risks could be managed. These analyses, policies, and strategies were an attempt by the MOE to rationally cope with budget constraints. However, none of these tools assessed the risks that resulted from the significant budget and staff reductions.

In its closing submissions at the Inquiry, the government referred to an undated memorandum from Deputy Minister of the Environment Linda Stevens to Norman Sterling, who became Minister of the Environment in August 1996. The memorandum is an undated draft; nothing in it indicates that Ms. Stevens sent, authorized, or otherwise agreed with the contents of the document, nor is there anything to indicate that it was actually forwarded to Minister Sterling. The memorandum included this statement:

As dramatic as these constraints are, the Ministry's capacity to fulfill statutory obligations and implement new priorities was maintained.

Government counsel used this memorandum to support the suggestion that Minister Sterling relied upon assurances from his senior bureaucrats that the risks were manageable. This memorandum does not, however, demonstrate that a proper risk assessment study had been done, nor does it show a plan as to how the specific risks would be managed.

Premier Michael Harris, who chaired the Cabinet meeting at which the MOE's business plan was approved on February 28, 1996, testified that he would have asked if the impacts were a concern, but he does not recall making such an inquiry. He does not recall seeking advice regarding whether the risks could be managed. Premier Harris could not identify any documents that persuaded him that the increased risks to the environment and public health could be managed. He accepted that as chair of the Policy and Priorities Board and chair of the Cabinet, which approved the 1996 business plan, he is accountable if any of these reductions are found to have contributed to the tragedy in Walkerton.

The MOE's 1996 business plan was not released to the public after it was approved by the Cabinet. However, on May 1, 1996, the MOE published a modified business plan that did not include assessments of the adverse impacts or concerns about increased risks to the environment and human health resulting from the budget reductions. In fact, the business plan that was released to the public promised reforms "without lowering the current high level of environmental protection in Ontario."

One cannot help but question the basis for this statement, given the nature of the risks identified in the original business plan and the failure to conduct a risk assessment or develop a risk management plan.

## **11.5 Conclusions**

The failure to properly assess and manage the risks arising from the budget reductions had one direct effect and two indirect effects on the events in Walkerton.

I am satisfied that the failure to enact a regulation mandating testing laboratories to follow a notification protocol at the time of privatization of laboratory testing services did increase the risk to public health. Although this risk was not specifically identified in the business plan or in other documents warning

of risks, it is very likely that if a proper risk assessment had been done regarding the decision to discontinue provincial government laboratory testing, the need for a notification regulation would have been identified and should have been addressed. As I concluded above, the failure to enact a regulation requiring testing laboratories to notify the proper authorities promptly and directly about adverse results had a direct impact on the events in Walkerton.

In the warnings about the risks associated with the budget reductions, references were made to the loss of technical expertise and the reduction in the number of proactive inspections. Again, there was no risk assessment regarding the effects of these changes, particularly as they related to the safety of drinking water. A proper risk assessment might have identified the potential for the problems in the approvals and inspections programs that I have discussed as contributing to the events in Walkerton. Of course, it is impossible to be certain that steps would have been taken to address potential problems even if the specific risks had been identified. I can conclude only that the budget reductions made it less likely that the approvals and inspections programs would have detected and addressed the two problems at Walkerton that contributed to the outbreak: the need for continuous monitors at Well 5, and the improper operating practices of the Walkerton PUC.

## **11.6 Detailed Summary of the Reductions**

The following tables and commentary summarize evidence heard at the Inquiry with respect to the budget and staff reductions at the MOE.

Table 1 summarizes the annual budget reductions and the constraint programs for the period 1992–2000.

Table 2 presents a survey of budgets for the period 1990–2000. As stated elsewhere, the government used various figures to measure its financial resources in any particular fiscal year. The first column in Table 2 represents the annual estimates for the MOE. An annual estimate is the allocated amount of money approved by the legislature that is given to each ministry in any particular year. The huge reduction in 1994–95 results from the creation of the Ontario Clean Water Agency (OCWA) as a separate entity, so that it was no longer part of the MOE estimates. The second column represents the MOE's actual expenditures, which include both capital and operating expenditures. These figures exclude any expenditures attributable to the Ministry of Energy,

**Table 1 Summary of Budget Constraints at MOE (1992–2000)**

<b>Year</b>	<b>Reduction</b>	<b>Program</b>
1992–1993	\$82.9 million	Managed Savings Strategy, Capital and Investment Savings
1993–1994	\$79.9 million	Managed Savings Strategy, Expenditure Control Program, Multi-Year Expenditure Reduction Program
1994–1995	\$47.9 million	Social Control, Expenditure Control Plan Capital
1995–1996	\$30.8 million + \$24.6 million from OCWA* + \$19.1 million from IWA** and ETF***	Operating Reduction Target
1996–1997	\$200.8 million (over two years)	Business Plan Allocation Target
1997–1998	\$13.5 million	Base Review Target
1998–1999	\$5.0 million	Efficiency Operating Constraint
1999–2000	\$4.8 million	Efficiency Operating Constraint
2000–2001		

\* Ontario Clean Water Agency

\*\* Interim Waste Authority

\*\*\* Environmental Technologies Fund

**Table 2 Summary of Financial Resources of MOE (1990–91 to 2000–01)**

<b>Year</b>	<b>Annual Estimates</b>	<b>Actual Expenditures</b>	<b>Operating Expenditures</b>
1990–91	\$648.7 million	\$645 million	\$363 million
1991–92	\$774.0 million	\$711 million	\$461 million
1992–93	\$722.3 million	\$671 million	\$453 million
1993–94	\$837.7 million	\$539 million	\$379 million
1994–95	\$376.0 million	\$328 million	\$271 million
1995–96	\$411.3 million	\$400 million	\$282 million
1996–97	\$373.3 million	\$367 million	\$166 million
1997–98	\$349.8 million	\$255 million	\$165 million
1998–99	\$270.6 million	\$213 million	\$169 million
1999–00	\$406.7 million	\$341 million	\$174 million
2000–01	\$229.1 million	—	—

which was part of the MOE for a period in the 1990s. Unfortunately, information relating to fiscal year 2000–01 was not available to the Inquiry. The third column shows the MOE's operating expenditures. It too neutralizes the effect of the Ministry of Energy by excluding its expenditures for the years in which it was part of the MOE. This information was also unavailable for 2000–01.

In the five-year period after 1995–96, the MOE's annual estimates were reduced by over 44%. In the four-year period after 1995–96, the actual expenditures were reduced by approximately 15% and its operating expenditures by approximately 38%.

Table 3 surveys the MOE's staff complement during the last decade. There are three separate measures. The first column shows funded positions – that is, all positions that are actually funded by the Ministry's allocation. Where there are two figures in a box, the lower figure is the one that excludes the Ministry of Energy employees during those years when the two ministries were combined. The huge reduction in 1994–95 results from the creation of OCWA and the

**Table 3 Summary of Position and Staff Complement of MOE (1990–91 to 2000–01)**

<b>Year</b>	<b>Funded Positions</b>	<b>FTEs</b>	<b>Headcount (as of March 31, excl. OCWA)</b>
1990–91	3,317	3,024	2,306
1991–92	3,517	3,218	2,378
1992–93	3,575	3,193	2,358
1993–94	3,510 3,344	3,220	2,371
1994–95	2,554 2,408	3,310	2,208
1995–96	2,430 2,283	2,298 2,151	2,065
1996–97	1,905 1,787	2,188	1,663
1997–98	1,648 1,531	1,714	1,494
1998–99	1,509	1,582	1,418
1999–00	1,529	1,439	1,374
2000–01	1,501	1,394	—

transfer of MOE employees to the Crown agency. The second column represents FTEs (full-time equivalents) as of the end of each fiscal year. The lower of the two numbers for 1995–96 represents the MOE total excluding the Ministry of Energy. The third column is the MOE’s “headcount,” which excludes OCWA employees before and after its creation. The headcount includes all “classified” employees (civil servants), all “unclassified” employees employees (for example, contract employees), and all management staff. It does not, however, include staff who are on leave or are receiving Long Term Income Protection.

Whatever measure is chosen, Table 3 shows a significant reduction of staff beginning in 1995–96. Excluding the Ministry of Energy, a 34% reduction in funded positions and a 35% reduction in FTEs take place over the next five years. Headcount shows there is a 33% reduction between 1995–96 and 1999–00.