



NEGLECTING OUR OBLIGATIONS



ministry's arsenal, strengthening its capacity to protect public waters. Failure in this instance lies not with laws or policies, but with their lack of application. At some crucial level, the ministry lacks the resolve to face and fix the problem.

The ministry's reluctance to tackle the issue is underscored by the continued lack of an up-to-date summary of Ontario sewage treatment plant performance and monitoring data. MOE's last comprehensive summary was published in 1993, based on 1991 data. In response to an ECO recommendation in 2003, MOE said in March 2005 it was working on a summary. But in 2006, MOE acknowledged that this work is not likely to begin until 2007 at the earliest. Moreover, MOE considers the review of plant performance an "internal exercise," and says "there are no plans to share the results of the review with the public" (see pages 196-197).

On the issue of regulating municipal sewage discharges, MOE has failed to show the required leadership. MOE needs to take seriously its obligations as regulator and should exercise its full range of legal tools on behalf of the environment. MOE also needs to break the habit of negotiating sewage discharge matters privately with select partners. The ministry has an obligation to operate in an open and consultative way, to present the public with the facts, and to treat the environment as its primary client.

Postscript: In June 2006, Kingston Utilities began, as promised, to post a log of sewage bypass events on its Web site, as well as a summary of annual sewage bypass records for the years 2000-2006. Regrettably, the city reported a bypass event on June 27, 2006, when heavy rain forced the bypassing of approximately 5 million litres of sewage into Lake Ontario, despite the recent infrastructure improvements.

(For a more detailed review, see the Supplement to this report, pages 197-204. For ministry comments, see page(s) 220.)

Wildlife in Captivity: The Licensing of Ontario's Zoos

In January 2006, applicants submitted a request for a review of the Ministry of Natural Resources' zoo licensing regime, asserting that it is both grossly inadequate and significantly inferior to those of the other provinces. MNR's zoo licences have only four basic conditions: record keeping, the identification of birds, the size of enclosures, and the provision of veterinary services. The applicants asserted that these minimal licensing requirements are inadequate to protect captive wildlife, the environment and the public in Ontario.

The applicants further asserted that MNR's inadequate licensing regime has resulted in a proliferation of sub-standard zoos in Ontario. They provided a report setting out the results of an Ontario zoo audit commissioned by the applicants – 83 per cent of the inspected exhibits failed to meet the applicants' criteria for basic housing and animal welfare. According to their report, animals were frequently housed in barren, ramshackle cages, lacking shelter, shade or other important aquatic or terrestrial habitat features such as branches or ponds.



Some exhibits were too small for animals even to move about freely and exercise natural behaviours. As a result, many animals displayed signs of boredom, frustration and abnormal behaviour, such as pacing and bar-biting. In addition, the auditor found dirty cages and water bowls, which could result in disease transmission.

The report also noted that many zoos did not have adequate barriers to prevent animals from escaping or public contact with dangerous animals. MNR's failure to impose security standards to ensure the safe containment of captive wildlife, the applicants asserted, poses significant threats to both public safety and the environment. They noted that potential impacts include escaped exotic zoo animals becoming established in Ontario, competing with native animals in the wild, breeding, disrupting natural ecological relationships and gene pools, spreading diseases, putting native populations at risk of being supplanted by invasive species, and, ultimately, threatening Ontario's biodiversity.

The applicants also noted that even if MNR's licensing standards were improved, an estimated two-thirds of all animals kept in Ontario's zoos would still remain unprotected. The *Fish and Wildlife Conservation Act (FWCA)* requires only people who keep prescribed species of native wildlife – species listed in the schedules or regulations under the *FWCA* – in captivity to obtain a licence from MNR. There are no licensing requirements for exotic – non-native – wildlife or native wildlife that are not prescribed.

Ministry response

MNR decided that the requested review was not warranted. In its response to the application, MNR contended that the *FWCA*, its regulations and its policies already protect and manage prescribed native wildlife in Ontario zoos. MNR noted that in addition to the four general licensing conditions, the ministry modifies or adds to these conditions on a case-by-case basis to ensure a minimum standard of care. MNR also pointed out that it continues to work with interested parties to review the general licence conditions on an ongoing basis.



In response to the applicants' assertion that exotic species should be regulated, MNR simply noted that its mandate is to protect and manage only the native fish and wildlife resources of Ontario and that the *FWCA* addresses only native wildlife resources. MNR also commented that animal welfare for both native and exotic animals falls under the mandate of the Ministry of Community Safety and Correctional Services (MCSCS), which deals with cases of cruelty to animals through the Ontario Society for the Protection of Cruelty to Animals (OSPACA).

MNR also noted that the *FWCA* prohibits people from releasing wildlife from captivity, as well as requiring persons who keep wildlife in captivity to ensure that they do not escape. These provisions apply to both native wildlife (s. 46 of the *FWCA*) and exotic wildlife (s. 54 of the *FWCA*). According to MNR, these provisions protect the environment and wildlife populations living in nature from contact with escaped captive animals.

ECO Comment

In the time since the *FWCA* was enacted in January 1999, MNR has stated numerous times, including in response to this application for review, that it is meeting with interested members of the public to assess or develop standards for zoo licences in Ontario. MNR did actually develop comprehensive draft "Minimum Standards for Zoos in Ontario" in July 2001; however, these standards have never been posted on the Registry for consultation, nor have they been implemented.

Given MNR's promises to develop new standards for zoo licences, the ECO is disappointed that it failed to take this timely opportunity to review and develop those standards in an open and transparent public process. The ECO believes that MNR should at least have provided an explanation as to why, more than seven years after the enactment of the *FWCA* and its regulations, it still has not followed through on its promises to finalize regulated standards. MNR's process for the review and development of zoo standards appears to be taking place behind closed doors. The ECO urges MNR to engage in a formal, open and transparent review of its licensing conditions, and that it post any such policies or standards on the Environmental Registry for public comment.

The ECO disagrees with MNR's decision that a review is not warranted. A preliminary review of the various provincial regimes suggests that Ontario does indeed lag behind most other provinces in Canada in regulating captive wildlife. Almost all of the other provinces have more comprehensive and stringent standards than Ontario. In fact, every

other province, except for British Columbia, regulates both native and exotic wildlife in captivity. A few jurisdictions even set out specific standards by species or groups of species. Most provinces impose far more detailed standards with respect to enclosure size, diet, sanitation, veterinary care, security requirements and design (including materials, landscape features, shelters and equipment).

There are clearly large regulatory gaps and overlaps in Ontario's zoo licensing regime, including the regulation of exotic species, public safety and animal welfare. For example, MNR stated that general animal welfare falls within the mandate of MCSCS. However, that ministry, through OSPCA, deals with cases of animal cruelty – the deprivation of food, water, or shelter, or the violent abuse or neglect of an animal. MCSCS does not, as MNR itself acknowledged, set out general standards or licensing requirements for the general well-being of captive animals—for instance, for stimulation, enrichment and quality of life.

The ECO believes that for the protection of wildlife, the environment and the public, there must be one key agency responsible for *all* aspects of zoo regulation, and that agency should be MNR. There is convincing support for the argument that MNR has the authority and the mandate to regulate all aspects of zoo licensing. In 2002, the Ontario Court of Appeal stated: "Concerns regarding animal welfare... fall squarely within the policy and objectives of the *FWCA*." As the *FWCA* is administered by MNR, this provides a strong legal basis for the claim that MNR is responsible for regulating the general welfare and well-being of wildlife in captivity. In fact, MNR seems to have accepted this responsibility to regulate animal well-being by imposing a zoo licence condition regarding the size of enclosures and by including, in its draft zoo standards, provisions for animal welfare.

Similarly, MNR has established precedents in regulating exotic species, despite its assertion that this is not within its mandate. In December 2004, MNR amended O.Reg. 665/98 (Hunting) under the *FWCA* making it illegal to hunt all wildlife in captivity, not just native captive wildlife, in order to provide "more equitable treatment of native and non-native wildlife." In addition, the *FWCA* includes provisions concerning the release, escape and recapture of both native and non-native captive wildlife.

Finally, the ECO believes that a comprehensive zoo licensing regime must include security standards for the purpose of preventing the escape of captive wildlife. The prevention of wildlife escapes to protect animals living in the wild and the environment is clearly within MNR's mandate. The only security requirement currently imposed under the *FWCA* is that a person who keeps wildlife in captivity "shall ensure that it does not escape." Specific security standards would provide zoo owners with necessary guidance

on how to achieve this goal and would enable MNR to better enforce this requirement. It would also have the benefit of addressing public safety concerns at the same time.

(A more detailed review of this application is found in the Supplement to this report, pages 229-233. For ministry comments, see page(s) 220.)

Recommendation 14

The ECO recommends that MNR engage in a formal and transparent review of its zoo-licensing policies, posting a proposal on the Environmental Registry for public comment.

MOE Reviews Rules for Sewage Haulers ... Outside the *EBR*

On October 12, 2004, the ECO received an application that focused on the kinds of approvals required by septage haulers. The applicants represent approximately 200 small companies that pump septic tanks and portable toilets and handle biosolids. Some companies use a small tank truck to pump out septic tanks and portable toilets, then pump the contents of the small tank truck into a larger tank truck to be hauled to a sewage treatment plant or to land application sites for disposal. In some cases the contents of the small tank truck are pumped into a temporary holding tank on the owner's property for future transportation to sewage treatment plants or land application sites.

The applicants requested a review of Regulation 347, R.R.O. 1990 (the General Waste Management Regulation), under the *Environmental Protection Act (EPA)*. The applicants dispute the Ministry of the Environment position that a certificate of approval (C of A) for a waste disposal site is required where a transfer of hauled sewage occurs prior to transport for final disposal. The applicants alleged that MOE officials are incorrect in their interpretation of "transfer" and "transfer station" under Regulation 347. Noting that "transfer" is defined in Regulation 347 as a "physical transfer of possession," the applicants questioned whether the transfer of waste between vehicles or tanks owned by the same company is considered a physical transfer of possession. They also questioned how a transfer station could be considered a waste disposal site. (This application is almost identical to an application that was reviewed in the Supplement to the 2003/2004 ECO annual report, pages 234-236.)