



**Legislative Assembly
of Ontario**

First Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Thursday 19 May 2005

**Journal
des débats
(Hansard)**

Jeudi 19 mai 2005

**Standing committee on
the Legislative Assembly**

Environmental Enforcement
Statute Law Amendment Act,
2005

**Comité permanent de
l'Assemblée législative**

Loi de 2005 modifiant des lois
sur l'environnement
en ce qui concerne l'exécution

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Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Thursday 19 May 2005

Jeudi 19 mai 2005

The committee met at 1537 in committee room 1.

ENVIRONMENTAL ENFORCEMENT
STATUTE LAW AMENDMENT ACT, 2005

LOI DE 2005 MODIFIANT DES LOIS
SUR L'ENVIRONNEMENT
EN CE QUI CONCERNE L'EXÉCUTION

Consideration of Bill 133, An Act to amend the Environmental Protection Act and the Ontario Water Resources Act in respect of enforcement and other matters / Projet de loi 133, Loi modifiant la Loi sur la protection de l'environnement et la Loi sur les ressources en eau de l'Ontario en ce qui a trait à l'exécution et à d'autres questions.

The Chair (Mr. Bob Delaney): I bring this meeting of the standing committee on the Legislative Assembly to order.

Mr. Toby Barrett (Haldimand–Norfolk–Brant): On a point of order, Chair: This has been raised a number of times. I just want to point out and leave with the committee that we have before us at least 70 government amendments. I think if you include amendments from the other two parties, there are about 100 amendments. I am concerned about whether we will be able to adequately review 100 in the time allotted. Again, would we end up with a bill that is unrecognizable? So I am concerned about that. I know there has been a call to withdraw this bill and to replace it with a fresh piece of legislation.

The Chair: The point is taken. Should the clause-by-clause consideration of the bill not be concluded by the time the committee is scheduled to adjourn, then we would have to arrange another meeting time to continue, which would be after constituency week, and such time would need to be approved by the House—or we could meet at our regular scheduled time.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): We're scheduled to adjourn at 6?

The Chair: We're scheduled to adjourn at 6.

Are there questions, comments or amendments to any section of the bill, and if so, to which section?

Mr. John Wilkinson (Perth–Middlesex): My understanding, and I could be wrong, of clause-by-clause is that you call each section, and then when we get to a section where there's an amendment, the parties respectively move the amendments. Is that correct?

The Chair: I have an amendment before section 1. It's for section 0.1.

Mr. Wilkinson: Because it deals with an act not stated in the bill, that would be the one out of order, I think.

The Chair: The Chair rules that at this point the motion would be in order and, if moved, is debatable.

Mr. Barrett: With respect to this initiative and the number of amendments that I've put forward—

The Chair: Are you prepared to move the amendment? You need to move it.

Mr. Barrett: I thought it was a government amendment. Is number 1 not on our list, on page 1? I guess it's my confusion. So we're not having any opening statement before we—

Mr. Wilkinson: Not according to the subcommittee.

The Chair: If you wish to discuss the amendment that was tabled, you have to move it first.

Mr. Barrett: Thank you, Chair. I wasn't sure what you were moving over there. I thought it was a government amendment.

Mr. Wilkinson: I didn't move anything.

Mr. Barrett: The committee will find a PC motion on page 1.

I move that the bill be amended by adding the following section:

“Corporations Tax Act

“Corporations Tax Act

“0.1 The Corporations Tax Act is amended by adding the following section:

“Environmental expenses tax incentive

“13.6 In computing its income from a business for a taxation year, a corporation may deduct an environmental expenses tax incentive, as determined in accordance with the regulations, in respect of eligible environmental expenses incurred during the taxation year.”

By way of discussion, the spirit of this amendment is found in the IPAT report. This is the report by the Industrial Pollution Action Team, which was led by Dr. Isobel Heathcote. She indicated that there are some tax exemptions. Many of them are more of a bolt-on, end-of-pipe type of pollution control exemption. She felt that within Canada—and I would say, by extension, in Ontario—we are behind other jurisdictions that have made effective use of economic incentives to encourage dischargers to go beyond compliance levels. Apparently, Canada is one of only a handful of countries without

these kinds of approaches in their environmental management tool kit. She makes reference to legislative frameworks in Denmark, Sweden and Germany.

By way of example, she mentions that in addition to jail sentences or traditional fines for non-compliance, this Legislative Assembly should consider a range of economic instruments: taxes on certain feed stocks or raw materials, grants, low-rate loans and accelerated depreciation programs for pollution prevention; very simply, to consider the carrot approach rather than relying solely on the stick, which has been the traditional command-and-control approach in the past.

The Chair: Any further discussion?

Mr. Rosario Marchese (Trinity–Spadina): Just a question. If there are no incentives given, that I'm aware of, how can you deduct an incentive that isn't anywhere in the act?

Mr. Wilkinson: I felt the motion to be impossible, and we won't be supporting it.

Mr. Marchese: I would be happy to support something that produces some incentives that allow for corporations to do the right thing. I think that would be useful. Unfortunately, the government hasn't provided any of those incentives. Because there are none, this motion becomes very difficult to support.

Mr. Barrett: Just a further point of explanation: We don't have an act; we have a bill or a draft bill. To that end, I'm requesting that, through amendment, this be incorporated in the proposed bill to be part of the legislative framework, as recommended to this government by their own expert group.

The Chair: Further discussion? Shall the amendment carry? All those in favour? Opposed? I declare the amendment lost.

Are there any amendments to section 1?

Mr. Wilkinson: I move that the definition of "environmental penalty" in subsection 1(1) of the Environmental Protection Act, as set out in subsection 1(2) of the bill, be amended by striking out "under section 182.1, 182.2 or 182.3" at the end and substituting "under section 182.1."

This motion removes reference to sections of the EPA that deal with provincial officer environmental penalty orders. I might add that it's identical to PC motion 3, which we would support, and we would withdraw this as long as we had agreement. But we want to thank the official opposition for PC motion 3.

The Chair: Questions and comments?

Mr. Barrett: My only comment is that this does mirror the motion on page 3. I think the wording is actually identical. I'm not sure what the process is when you get a coincidental occurrence like this.

Mr. Wilkinson: Because they're the same, my understanding is that the tradition here is that the government motion would come first, though we'd be more than happy to withdraw this motion and vote in favour of the Conservative motion since they are identical.

Mr. Marchese: If it's a government motion it's passed, and then you simply withdraw yours because it's already done.

Mr. Wilkinson: No, we can withdraw ours.

The Chair: Just to clarify, does the Chair understand that the government withdraws its motion?

Mr. Wilkinson: To be clear, it does.

The Chair: So it's withdrawn.

Mr. Barrett: That's fine. I appreciate that show of good faith, duly recorded in Hansard.

The Chair: The Chair can feel the love.

Further amendments to section 1?

Mr. Barrett: This would be the on page 3 then, just to make sure.

I move that the definition of "environmental penalty" in subsection 1(1) of the Environmental Protection Act, as set out in subsection 1(2) of the bill, be amended by striking out "under section 182.1, 182.2 or 182.3" at the end and substituting "under section 182.1."

I just want to indicate my appreciation for the courtesy extended by the parliamentary assistant.

The Chair: Questions and comments?

Mr. Marchese: None, but I wanted to make a request before we get on to the next section that people speak a little more loudly and clearly so that an aging person like me can hear a little more effectively.

The Chair: So noted. Shall the amendment carry? Carried.

Further amendments to section 1?

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(2.1) Subsection 1(1) of the act, as amended by the Statutes of Ontario, 1992, chapter 1, section 22, 1998, chapter 35, section 1, 2000, chapter 26, schedule F, section 12, 2001, chapter 9, schedule G, section 5, 2001, chapter 17, section 2, and 2002, chapter 17, schedule F, table, is amended by adding the following definition:

"regulated person" means,

"(a) a person who belongs to a class of persons prescribed by the regulations and who holds or is required to hold,

"(i) a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act, or

"(ii) an approval, licence or permit under the Ontario Water Resources Act, or

"(b) a corporation that belongs to a class of corporations prescribed by the regulations;"

1550

This motion will ensure that environmental penalties must be issued against the company, and not company officials. We heard repeatedly from the deputants on this matter.

Mr. Barrett: By way of discussion, we concur with this motion. I think this is actually mirrored by a PC motion on page 53, if I'm not mistaken.

Mr. Marchese: Is this a weakening of the motion that was originally before us, or would you say that you listened to the various people who came here and it's not

a weakening of the act in any way; it just means that we're strengthening it somehow?

Mr. Wilkinson: Corporations, individuals and labour unions all came to us and said, "We don't want it to have a perverse effect where individuals feel that they should not immediately notify, if there is something that they have done, with fear that they will be subjected to a large penalty." In regard to our regulations, we need to, in our opinion, hold the corporations to account, and this will clarify the bill. That's why we did it.

Mr. Marchese: I understand. I can appreciate employees, but do you think directors fall into the same category?

Mr. Wilkinson: That's another section, and we'll be dealing with that.

Mr. Marchese: So this only deals with employees, not directors?

Mr. Wilkinson: Yes. We'll be dealing with that in subsequent amendments. This just deals with the subsection that we're dealing with, which is (2.1).

Mr. Marchese: OK. Thank you.

Mr. Barrett: It's my understanding that workers could be subject to a fine of up to \$20,000. There's just concern that it's unfair to employees when it is the company that should have full responsibility for its actions, and obviously for its assets. So I certainly saw consensus there that workers should not be held accountable when they're out there doing their best job, ideally with proper training.

Mr. Marchese: I'm in agreement that workers should not be held liable as well, for the record.

The Chair: Any further questions or comments? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(2.2) Section 7 of the act is amended by adding the following subsection:

"Contravention of section 14

"(1.1) No order shall be issued under subsection (1) as a result of a finding that a contaminant is being discharged in contravention of section 14 unless the contravention causes or is likely to cause an adverse effect."

This motion will ensure that control orders shall only be issued for a section 14 contravention, which references unlawful discharges, if the discharge "causes or is likely to cause an adverse effect."

The Chair: Mr. Hardeman, anything?

Mr. Ernie Hardeman (Oxford): No, no. That's fine.

Mr. Marchese: Just for clarification, in your view, Mr. Parliamentary Assistant, this increases the environmental protection we're looking for, or decreases environmental protection?

Mr. Wilkinson: In my opinion, it clarifies it.

Mr. Marchese: Given that you've been through these hearings and that you are the parliamentary assistant, you know this stuff better than some others. Others have argued that "likely to cause" versus "may cause" weakens environmental protection, not strengthens it. So when you say you're clarifying with the language, I'm not sure we achieve what many were trying to achieve.

Mr. Wilkinson: I appreciate the fact that the member for Trinity–Spadina has brought this up. I just want to say at the outset that if we look in total at the government package of amendments, we are adding teeth to what used to be known as administrative penalties, which were created by the previous government but, it's my understanding, were never used or proclaimed. Changing the term to "environmental penalties," it is a civil administrative penalty and not a prosecution.

The act, of course, allows us under the Environmental Protection Act to prosecute people. So it goes to the question of "likely" versus "may"—strict liability versus absolute liability. The amendments proposed by the government say that in regard to environmental penalties, which is a civil administrative issue, the bar will be "may," which we can refer to as "absolute liability," but in regard to prosecution—in other words, this is an offence where one is prosecuted. We know from the Supreme Court decisions in regard to the Soo, and particularly the Transport Robert case, that if there is jail time involved, the courts believe that the likely definition, which is a more difficult threshold for the prosecution to jump over, is one that meets the current constitutional interpretation of what is reasonable.

After listening to a number of delegations, I can tell you that industry would like "likely" on everything, but environmental penalties are going to be "may," and we're clarifying that when it comes to criminal prosecutions under the act the standard will remain as "likely." Since we in our draft bill at first reading had "likely" in there changed to "may," we have to remove all those references, which is why there are a number of amendments.

But just to share with the committee, whenever we're looking at that question of prosecution, we're going to ensure now, upon reflection and listening to the deputants, that that level should be "likely," and that's strict liability, but absolute liability will be dealt with in regard to administrative penalties. That's where we are on it.

Mr. Norm Miller (Parry Sound–Muskoka): Just for clarification then, section 14 cases involve prosecution and are more serious, so you're raising the bar from "may" to "likely," as many of the deputants—

Mr. Wilkinson: Which is what it was, which is status quo ante, and then the bill, as drafted at first reading, showed "may" in regard to issues of prosecution.

Mr. Miller: And you're raising that to "likely"?

Mr. Wilkinson: We're raising it back to "likely," so that that doesn't change in regard to prosecution.

Mr. Miller: Which I would agree with.

Mr. Wilkinson: So there really are two thrusts, but there is a difference between the whole criminal prosecution and what we're attempting to do—and I think the former government tried to do, but had not proclaimed the whole issue of civil administrative penalties, which we feel confident, in regard to the law, despite the protestation from some groups and industry, are reasonable, balanced and constitutional.

Mr. Hardeman: Just a question. I'm not a lawyer as the esteemed gentleman across is—

Mr. Wilkinson: No, and I wasn't before I got into this bill, Ernie.

Mr. Hardeman: I want to know whether that is the legal opinion of the ministry, that that's what we're doing. Hard as it is to believe, I do believe that everyone around the table is a politician, and they may be lawyers besides, but they're not here in their legal capacity. After I've heard that these changes are just going to do that—as an individual I have trouble understanding the difference between “may” and “likely.” I need some assurances that that's exactly what we're going to go do with all these changes, that that's the interpretation. When I learned the language, from Dutch to English—

Mr. Marchese: So you want somebody to comment; is that it?

Mr. Hardeman: Exactly. I'd like to know what the ramifications of changing “may” to “likely” are.

Mr. Wilkinson: If we could have Steve Carty, who's with the Ministry of the Environment and who, I might add, is a lawyer.

The Chair: If you could, just before your explanation, please identify yourself for the purposes of Hansard.

Mr. Stephen Carty: My name is Stephen Carty and I'm with the Ministry of the Environment. I wish I was a lawyer, but I'm not a lawyer. I'm just a—

Mr. Wilkinson: Sorry. Just trying to keep the record straight.

The Chair: Is there a lawyer in the House?

Mr. Carty: I'm a policy person, so I'll try and give you the policy answer, Mr. Chair, through you, on this question.

I think Mr. Wilkinson accurately described the changes that are being made in the motions from what is in Bill 133. As you know, there are many, many changes in Bill 133, changing the word “likely” to “may.” Because there were many comments and suggestions raised by stakeholders, industry, environmental groups, everyone on that change, many or some of the changes in Bill 133 of the “likely” to “may” are being changed back from “may” to “likely.” But there are three important sections where the “may” is being retained, which is the lower threshold, and that is for environmental penalties, as Mr. Wilkinson said, and for a couple of other order provisions of the bill in terms of preventive orders and orders that provincial officers can issue.

1600

But the other key change that Mr. Miller and you mentioned, where we're going back to “likely,” is for prosecutions. I think the key distinction Mr. Wilkinson was trying to make was the difference between the administrative-type sections in the bill and the parts of the bill where someone would go to court and be charged in court. That part of the bill, in terms of prosecutions, is going back to “likely,” which is what's in the bill now.

Mr. Hardeman: That's fine. Thank you.

The Chair: Shall the amendment carry? Mr. Marchese?

Mr. Marchese: I wanted to say, in spite of the explanation that was given, that I still support the original

wording of “may,” as the ministry had it. I suspect that they had it right then, so I'll be voting against it.

The Chair: In the likelihood that you may have other questions regarding the “may” or the “likely” or the “likely” or the “may,” I'm sure that the staff will likely answer them.

Shall the amendment carry? Carried.

Mr. Wilkinson: To reference page 6, I move that subsections 1(3) and (4) of the bill be struck out and the following substituted:

“(3) Section 14 of the act is repealed and the following substituted:

“Prohibition, discharge of contaminant

“14.(1) Subject to subsection (2) but despite any other provision of this act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.

“Exceptions

“(2) Subsection (1) does not apply to,

“(a) a discharge that is authorized under this act or the Ontario Water Resources Act, if the discharge does not cause and is not likely to cause an adverse effect; or

“(b) a discharge of a contaminant that arises when animal wastes are disposed of in accordance with normal farming practices, if the only adverse effect that is caused or that may be caused by the discharge is an adverse effect referred to in clause (a) of the definition of ‘adverse effect’ in subsection 1(1).”

This motion clarifies that section 14, again, dealing with unlawful discharges, is concerned with the effects of the discharge. Second, it ensures that section 14 retains the same standard as now exists in the EPA in relation to discharges that are authorized under the EPA and OWRA, such as through approval.

In this bill, we're trying amend two other pieces of legislation: the Environmental Protection Act and the Ontario Water Resources Act. It's our contention, of course, if we're going to deal with this, that we need to have a common threshold in both acts for like matters so that there is no kind of legal room where people can try to appeal these things because there seems to be some inconsistency. That's what we're doing with this motion.

The Chair: Questions and comments?

Mr. Miller: In this case, you're going to “may,” I see. There's “if the discharge causes or may cause” under 14, “Prohibition, discharge of contaminant.”

Mr. Marchese: What's the change, in other words?

Mr. Miller: Yes, what's the change, because further down you use “likely.” So I'm confused.

Mr. Wilkinson: Again, this is all about clarification. As we looked at striking out that section, which is by striking out “causes or is likely to cause an adverse effect” at the end, that changed the threshold. This motion is that when it comes to unlawful discharges, which is a prosecutable offence, the threshold should be “likely.”

Mr. Miller: Thanks.

Mr. Wilkinson: And you'll find this—we'll be at this all afternoon and perhaps later on.

Mr. Barrett: When I look at 14(1), “Subject to subsection (2),” where “if the discharge causes or may cause an adverse effect,” I’m concerned that that phrase is in there: “may cause an adverse effect.” There are just so many contaminants. I know the mining association was concerned about this, and as I understand it, they are concerned if that phrase “causes or may cause an adverse effect” is left in there. As I recall, they would recommend “likely.”

Mr. Wilkinson: I believe that’s exactly what we’re doing, Mr. Barrett. I know it’s confusing.

Mr. Barrett: By reading further I would see that; is that what you’re saying?

Mr. Wilkinson: Yes.

Mr. Hardeman: My question, again on “may” and “likely”: If I read subsection 14(1), at the bottom it deals with “if the discharge causes or may cause an adverse effect.” That’s the way it’s going to go into Bill 133. With the exceptions for the Water Resources Act, we’re going to change it to—we’ll have a “likely.” So “may” is still part of this. This is one that’s going to stay at “may,” is that right?

Mr. Wilkinson: If it has to do with prosecution, it’ll be “likely,” as Mr. Carty said.

Mr. Marchese: I’m going to support the parliamentary assistant on this one.

The Chair: Further questions and comments?

Mr. Hardeman: I guess, Mr. Chair, that’s the reason I’m having real problems with it, because Rosario is going to support the government on this one. It’s obviously not the direction that I would like to see it go.

Mr. Marchese: I think you should vote against it.

Mr. Hardeman: OK.

The Chair: Let’s test the waters here: Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsection 1(5) of the bill be struck out and the following substituted:

“(5) Subsection 15(1) of the act is repealed and the following substituted:

““When ministry to be notified, adverse effect

“(1) Every person who discharges a contaminant or causes or permits the discharge of a contaminant into the natural environment shall forthwith notify the ministry if the discharge is out of the normal course of events, the discharge causes or is likely to cause an adverse effect and the person is not otherwise required to notify the ministry under section 92.

““Same

“(1.1) The notice required by subsection (1) shall be given in accordance with any requirements prescribed by the regulations.””

For my colleagues, the motion adds a regulation-making authority so that the regulation can specify requirements for when a person has to notify the ministry of a discharge under the section which is subsequential. The amendment also restores, as Mr. Carty was saying, the “likely” threshold to section 15 and removes overlap between notification under this section and section 92,

which is the section that requires notification of spills. I’ll be voting in favour of it, as I’m sure you’re sure, Mr. Chair.

The Chair: Questions and comments? Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsection 1(6) of the bill be struck out.

Again, for my colleagues, the motion restores the “likely” threshold for the purposes of director cleanup orders.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move subsection 1(7) of the bill—
Interjections.

The Chair: We went through that last one very quickly. Mr. Wilkinson, did you offer an explanation for the amendment on page 8?

Mr. Wilkinson: Yes. The motion restores the “likely” threshold for the purposes of director cleanup orders, which we would be in agreement with.

The Chair: OK.

Mr. Wilkinson: Looking at page 9 in our package:

I move that clause 17(c) of the Environmental Protection Act, as set out in subsection 1(7) of the bill, be amended by striking out “or may damage or endanger” and substituting “or is likely to damage or endanger.”

Again, the motion restores the “likely” threshold for the purposes of director cleanup orders.

The Chair: Questions? Comments?

Mr. Marchese: For the record, Mr. Chair, we’re against most of these amendments that diminish environmental protection, and this is one of them. For the record, we’re against it.

The Chair: Acknowledged.

Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: With great trepidation, I move that section 1 of the bill be amended by adding the following subsection:

“(7.1) The French version of subsection 18(1) of the act is amended by,

“(a) striking out ‘d’une propriété’ in the portion before paragraph 1 and substituting ‘d’un bien’; and

“(b) striking out ‘de la propriété ou sur cette dernière’ at the end of paragraph 4 and substituting ‘du bien.’”

1610

This motion is necessary to ensure that the French translation meshes correctly with the English text of the legislation. For my colleagues, we’ll be seeing a number of references throughout the day.

Mr. Marchese: As an explanation, what does the original “d’une propriété” mean in English, versus “du bien”?

Mr. Wilkinson: Mr. Marchese, you would know much better than I. I’m sure that we could bring our friends from the ministry up to give us—

Mr. Marchese: Just a quick explanation.

Mr. James Flagal: My name is James Flagal, from the legal services branch of the Ministry of the Environment. You're going to see a number of motions that clarify the French translation to make sure that it meshes with the English.

Mr. Marchese: We understand that.

Mr. Flagal: What is here is "bien," which is "property," which, just like many words in English, has many meanings. Given the context, "bien" is the proper use for "property."

Mr. Marchese: My assumption is that "propriété" is supposed to mean "property," and it sounds like an "anglicisme" to me. But nobody else knows, right?

The Chair: Legislative counsel may be able to assist.

Mr. Doug Beecroft: Our office uses the word "propriété" to translate the word "ownership." If we're dealing with a particular piece of property that is owned, we use the word "bien." That's why this motion is here. It makes the language more consistent throughout other places in the Environmental Protection Act.

Mr. Marchese: Thank you. We could sure use you, Doug. Thank you, guys.

The Chair: Merci beaucoup. Shall the amendment carry? Carried.

Mr. Marchese: I move that subparagraph 7i of subsection 18(1) of the Environmental Protection Act, as set out in subsection 1(8) of the bill, be struck out and the following substituted:

"i. prevent the discharge of a contaminant into the natural environment or reduce the amount of a contaminant that is discharged into the natural environment, including eliminating the use or production of a contaminant,"

What we're doing here is providing the director with the capacity to develop and implement pollution prevention plans aimed at not just preventing or reducing the amount of a contaminant discharged to the environment but also at eliminating the use or production of a contaminant, which many deputants spoke to as well. There are many contaminants, such as dioxins and furans, that we want to eliminate from the production process and not emit them. We need to have provisions that allow this to happen when necessary, and this motion would allow us to accomplish that.

The Chair: Comments?

Mr. Wilkinson: I agree with Mr. Marchese in the sense that it gives the director the authority to require pollution prevention plans in a preventive measure order. Bill 133 already provides this authority for a preventive measure order to require pollution reduction plans. Our issue has to do with, one has the power at the director level to reduce it to zero.

We also heard from deputants in regard to the need for us to be able to get to zero in many industries over time. I believe that further amendments in the bill, that we agreed to, in regard to spills prevention are the necessary tools that we should use with industry to get them to move to what we both would consider to be the promised land.

Mr. Marchese: I didn't see anywhere in the amendments anything that speaks to what we're putting here. We would be interested in eliminating the production of contaminants that get discharged into the water. Nothing in this bill or in the amendments deals with that at all.

I'm not sure why we don't want to move in this direction. I'm not quite sure what the objections really are to our moving in that direction. The comments you made don't speak to that. Perhaps you might want to address it again in terms of why you think we can't do this.

Mr. Wilkinson: I believe that my comments on this matter are clear.

The Chair: Shall the amendment carry? All those in favour?

Mr. Marchese: Recorded vote.

Ayes

Marchese.

Nays

Barrett, Cansfield, Flynn, McMeekin, Miller, Peterson, Wilkinson.

The Chair: I declare the amendment lost.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsection 18(1) of the Environmental Protection Act, as amended by subsection 1(8) of the bill, be amended by adding the following paragraph:

"8. To amend a plan developed under paragraph 7 or section 91.1 in the manner specified in the order."

Now, for my colleagues, this motion would authorize a preventive measure order to require that pollution prevention, spill prevention and spill contingency plans be amended.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that the French version of subsection 18(2) of the Environmental Protection Act, as set out in subsection 1(9) of the bill, be amended by,

"(a) striking out 'de la propriété' in clause (a) and substituting 'du bien'; and

"(b) striking out 'la propriété' at the end of subclause (b)(ii) and substituting 'le bien.'"

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Barrett

Mr. Barrett: PC motion on page 14. Is that correct, Chair?

The Chair: Yes.

Mr. Barrett: I move that section 1 of the bill be amended by adding the following subsection:

"(9.1) The act is amended by adding the following subsection:

“Pollution prevention, spill prevention and spill contingency plans

“18.1 Every person to whom Ontario Regulation 537/93, 760/93, 560/94, 561/94, 562/94, 63/95, 64/95, 214/95 or 215/95 applies shall, within six months after this section comes into force, develop and implement plans described in paragraph 7 of subsection 18(1).”

Again, it's driven, really, from the history of what we see in the development of legislation with respect to environmental issues that is reactive. We see a focus on environmental penalties as a continuation of a reactive, command-and-control, old-school, if you will, approach. The attempt here is to go beyond a reactive to a preventive approach.

Much of the advice to the government in the IPAT report by Dr. Heathcote focused on the issue and the need for not only more spill prevention, but pollution prevention. She indicated in the report that, generally speaking, in Ontario, it appeared there was no regulatory requirement for pollution prevention or spill prevention under Ontario's environmental legislation. Generally speaking, they found no preventive regulatory framework at all.

I know this came up a bit in testimony, and I know, regrettably, so much of the focus in the testimony seemed to be around penalties rather than around spills and prevention. So that was the rationale for doing this, and I know it's similar to at least one government motion, I think, found on page 18, which maybe gets more into contingency planning. I just thought I would make note of that. It's obviously not identical, but similar. So for the committee, I just wanted to mention that as well.

The Chair: Comments?

Mr. Wilkinson: I appreciate the amendment from the environment critic of the opposition. I can tell you that we do have a reservation and would not be able to accept it.

This motion, as far as we would understand, would require MISA companies to develop pollution prevention, spill prevention and spill contingency plans within six months of the section coming into force, and I think that's where our problem is.

1620

The government is introducing a motion, as you are referencing, that will require persons prescribed by regulation to develop and implement spill contingency and spill prevention plans, which I believe we would agree is proactive. These plans may be required at facilities beyond those that will be subject to EP orders. I think that would be balanced for the environment. However, it's probably unrealistic to require companies to develop a pollution prevention plan within six months. There's a great deal of difference between pollution prevention plans and spill prevention plans.

Also, I would say to my friend that the Environmental Protection Act currently does—I know you're asking whether or not there is the authority—have the authority, by regulation, to require companies to prepare pollution prevention plans. I would agree that this whole process

on Bill 133 has brought that to light, including the good work of Isobel Heathcote and the IPAT. It is definitely focusing on the need to get to the issue of prevention in the first place—and also spill contingency. But as we saw from, I think, some of the material we had from the ministry, there's a patchwork. Some are voluntary, and some are required. Some have contingency plans. Most don't have prevention plans.

Mr. Barrett: It sounds like two differences. Firstly, you're indicating there's a bit of a problem asking companies to develop it within a six-month time frame.

Mr. Wilkinson: The six-month time frame is a big issue for us, yes.

Mr. Barrett: Secondly, your amendment would apply not only to MISA companies but to everybody else. Is that what I heard?

Mr. Wilkinson: Environmental penalties, as we've said, by regulation, would be for MISA. But when it comes to the need to protect and have prevention plans and spill contingency plans, then we'd make sure that we had the authority to be able to do that.

Mr. Barrett: I'm part of a farm partnership. Would it apply to my farming operation, then? We're not in the MISA category; we're not that big.

Mr. Wilkinson: The quick answer would be no.

Mr. Barrett: I am concerned. I sure wouldn't want to ask everybody to develop these plans. I don't mind asking, say, British Petroleum or Esso. I think it's important to determine how far you went on this.

Mr. Wilkinson: This regulatory authority isn't any different than what was available under the Environmental Protection Act when you were in government. The question is whether or not you used the regulatory authority.

Mr. Barrett: It's no different, but you do have an amendment anyway to make it different?

Mr. Wilkinson: No, because we've also agreed with what Dr. Heathcote was saying about the need to get proactive and look at the issues of prevention and contingency. As we saw from our deputants, there is a patchwork across this province. Just in the MISA sector, where we have the greatest risk of large-scale contamination of the natural environment, we have a patchwork: required, not required, voluntary. Some have contingency plans. Some have spill prevention plans. I agree with Dr. Heathcote: We have to get to the point where preventing the spill is the order of the day. But obviously we're going to need to have some strengthened civil remedies here to make sure that we move things forward.

Mr. Barrett: I'm still not clear. Within the structure of this legislation, I limited mine to the MISA companies, many of the larger companies. I'm just not sure what other companies your amendment would draw into this. I am concerned. It does require infrastructure to do the paperwork and planning and to get the documents in. Many smaller companies have got enough paper on their desk as it is. How far would you go, then? Obviously, it doesn't include my farm partnership.

Mr. Wilkinson: I can assure you that I'm not the minister, nor am I the cabinet that would authorize all regulations that are proclaimed in this province. Right now, what we have to do is have a uniformity of regulatory power in this area, which we all agree is very important. But I can tell you that the six-month concept just seems impractical to us; laudable, but impractical. That's why we would vote against this motion.

Mr. Marchese: Let me understand: The six-month time frame bothered you most? That's the way you introduced the argument. If it was a year, would that be better? What would be an appropriate time that would make this more acceptable to you?

Mr. Wilkinson: In my opinion, the government would be best to consult with the stakeholders on all sides, like we've done on Bill 133, if we were to go down this path. The six-month deadline is not something I have seen come from stakeholders on both sides. To me, it seems to have come out of the blue, and in regard to making sure that we provide good government, I'd be concerned about having an arbitrary six months.

Mr. Marchese: I understand that six months might be complicated, but would a year or a year and a half make it easier for you to support it? That would give you enough time to consult with the stakeholders and so on.

Mr. Wilkinson: First of all, you can tell why I'm the parliamentary assistant and not the minister, Mr. Marchese. As a former minister, you'd know that, but I appreciate the question. The second thing is, my own personal opinion, as the MPP for Perth-Middlesex, is that this is something that would have to be consulted on broadly, similar to what we're doing here with this bill.

Mr. Marchese: I appreciate that. But if we have a long timeline, like a year and a half or two years maybe, you would have plenty of time to consult, no?

Mr. Wilkinson: I would wait until a consultation before I formed an opinion. I don't know about you.

The Chair: Shall the amendment carry? All those in favour? All those opposed? I declare the amendment lost.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(9.1) The French version of section 26 of the act is amended by striking out ‘sa propre propriété’ and substituting ‘son propre bien.’”

This motion is necessary to ensure that the French translation meshes correctly with the English text of the legislation, no matter how much I mangled it.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(10) of the bill be struck out.

This motion restores the “likely” threshold for the purposes of the application provision of part V, waste management, with the same rationale as was presented to my colleagues earlier today.

Mr. Marchese: For the record, Mr. Chair, I'm voting against it.

The Chair: Mr. Marchese has recorded that he will vote against it. Shall the amendment carry? I declare the amendment carried.

Mr. Wilkinson: I move that subsection 1(13) of the bill be struck out.

Mr. Barrett: On a point of order, Mr. Chair: What page number are we on?

The Chair: Page 17 at this point.

Mr. Wilkinson: We're on 17. Maybe there was some confusion. We're on 17, so let's make sure everybody has that.

The Chair: Page 17 is the page I'm on.

Mr. Barrett: I don't have 17.

Clerk Pro Tem (Ms. Tonia Grannum): The new package of amendments that I put on your desks does have page 17. Some people may have been missing page 17. Sorry.

Mr. Wilkinson: Mr. Chair, I don't mind waiting. We better make sure that all of our colleagues are on page 17.

Mr. Marchese: I'm voting against it.

The Chair: Are you trying to do this to me again?

Mr. Wilkinson: Though I've read in the motion, and as we're all getting to page 17, I would say again, in regard to this motion, that this section restores the “likely” threshold to the definition of the term “restore the natural environment” in subsection 91(1) of the EPA.

The Chair: Discussion? Comments? Shall the amendment carry? The amendment is carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(13.1) The act is amended by adding the following section:

“Spill prevention and spill contingency plans

“91.1 Every person who belongs to a class of persons prescribed by the regulations shall, in accordance with the regulations, develop and implement plans to,

“(a) prevent or reduce the risk of spills of pollutants; and

“(b) prevent, eliminate or ameliorate any adverse effects that result or may result from spills of pollutants, including,

“(i) plans to notify the ministry, other public authorities and members of the public who may be affected by a spill, and

“(ii) plans to ensure that appropriate equipment, material and personnel are available to respond to a spill.”

For my colleagues, this motion will amend part X of the EPA, which governs spills, requiring persons specified in regulation to develop and implement spill contingency and spill prevention plans. I believe, as we've all discussed, that it is in regard to IPAT and the need to get spill prevention in this province.

1630

The Chair: Discussion?

Mr. Miller: So I'm correct in assuming that this applies just to MISA companies?

Mr. Wilkinson: That is a very good question, Mr. Miller, and I'll just refer to our friends from the ministry.

The Chair: Again, for the purposes of Hansard, just identify yourself.

Mr. Carty: Stephen Carty with the Ministry of the Environment. In answer to this question, I think your

answer is in the first line of 91.1 where it says, "prescribed by regulations." So who would be subject to these plans would be spelled out in regulations before they're required of anyone.

Mr. Miller: So it could be more than these MISA companies; it's whatever the regulation says.

Mr. Carty: Yes.

Mr. Barrett: I have another question, Chair. Would contingency planning be a requirement of a certificate of approval?

Mr. Carty: Yes. You sometimes see it in certificates of approval or you can see it in orders issued by provincial officers.

Mr. Barrett: I see. Would he do it after a spill—

Mr. Carty: That would be on a case-by-case basis. So if you're out doing an inspection or you're issuing an approval to a specific plant, that could be a condition.

Mr. Wilkinson: If I might add, I think when we were looking at the MISA companies and looking at that, I saw a chart that showed that in some of the sectors of MISA they were all required by their certificate of approval to have a spill contingency plan. I can't recall which sector. On the other hand, we also had other sectors under MISA that were doing it voluntarily, where everyone was doing it voluntarily, and other ones where they were doing it voluntarily and some were and some weren't. It also goes to the whole issue of a level playing field. At least when we're bringing in a regulation, we would treat all like companies fairly by treating them all the same.

Right now, we have, as we agree, those companies that are environmental leaders and then we have some that are obviously environmental laggards on this issue. The regulation would allow us to address that inequity, in my opinion.

Mr. Miller: What process will you be following to circulate the regulations so that companies that will be affected will be aware that they'll be affected and may want to get input into the act for the forming of the regulations?

Mr. Wilkinson: We would use the Environmental Bill of Rights, as required, where all regulations are posted in advance, and allow comments.

The Chair: Questions and comments?

Mr. Marchese: Two things, Mr. Parliamentary Assistant: As I was reading, it says, "prevent, eliminate or ameliorate any adverse effects." I know this is already currently in law, but I thought it was very difficult to prevent or eliminate an adverse effect. You can ameliorate an adverse effect. Once an adverse effect occurs, you can attempt to ameliorate, but how can you prevent an adverse effect? There's always an effect, and preventing one—unless you do what I was proposing on page 11, which says, "including eliminating the use or production of a contaminant" or "prevent the discharge of a contaminant." It's so difficult to prevent an adverse effect.

Mr. Wilkinson: Mr. Marchese, if I were driving a car and someone jumped out in front of me, the adverse effect would be to hit him, but if I slam on the brakes, I'd prevent that from happening. In a society that is based on

industry, something that we all require to get through the day, the question is, do we eliminate the brakes by just saying, "We're not going to let that happen"? This is the issue we have, that we have to go to that over time.

Mr. Marchese: What if you're driving and you're distracted? It's got nothing to do with the brake. You don't apply the brake and an adverse effect happens. How can you prevent that?

Mr. McMeekin: Then you ameliorate the effect.

Mr. Marchese: You can ameliorate perhaps later.

Mrs. Donna H. Cansfield (Etobicoke Centre): They're two different issues.

Mr. Wilkinson: We'd let the health care system ameliorate the effect.

Mr. Marchese: Do you follow what I'm saying? Can you prevent an adverse effect? How do you know how to prevent an adverse effect? We may not know what adverse effect something might cause, unless we say, "This is a dangerous chemical. We better not put it into the water—no discharge—and eliminate it completely from production." Wouldn't that be the way to do it?

Mr. Wilkinson: I'm just from rural Ontario, but I think if I slam on the brakes, I prevent the effect.

Mr. Marchese: And I'm from the small riding of Trinity-Spadina.

Mr. Wilkinson: Huge people, so I don't think it's rural.

Mr. Marchese: We have no clarity on this, from my point of view. Does any lawyer have a comment on this? Doug or others? Other philosopher types?

Mr. Beecroft: I would think there would be circumstances where if there's a discharge but you act really quickly to deal with the discharge, you can prevent an adverse effect. If you spill a chemical out of your truck and, before it gets into the nearby stream, you clean it up, you may prevent any adverse effect.

Mr. Marchese: And this bill does that, or the amendments do this? That was an interesting point. Is there any other point that the policy people want to make, or is that it? Does the bill achieve that, or the amendments?

Mr. Wilkinson: We believe it does. That's why we're offering the amendment. The question is whether or not you're going to vote for spills prevention contingency plans in this province, Rosario.

Mr. Marchese: I'm not entirely clear whether we achieve it the way that it was explained, but that was a very good explanation, by the way. I suspect that might be—

Interjection.

Mr. Marchese: You'd still agree with me; right? It's complicated.

The Chair: Mr. Hardeman.

Mr. Hardeman: I agree with my esteemed colleague here. It would seem to me that the situation doesn't exist if it's still preventable. With the event we're talking about or the element we're talking about, how can that be? It doesn't come into existence if it's prevented. If you slam down the brakes and you avoid hitting someone, the event never happened. The hitting, the accident, didn't

happen. There's no adverse effect. There's nothing. It has to have been an event to reduce the amount.

Interjections.

The Chair: One at a time, please, and remember to address the Chair, and not each other. Mr. Hardeman has the floor.

Mr. Hardeman: I think it's very clear to me that something that's prevented is not an issue that we need to have legislation to deal with, because it doesn't exist. It didn't happen. You don't need to deal with the hole in the doughnut once you've eaten the doughnut. It doesn't exist.

Mr. Marchese: Isn't that true, policy people?

Mr. Wilkinson: The only way to achieve that utopia would be to ban all doughnuts, Mr. Hardeman.

My point is—and we've made this point—if a company has a pipe that goes directly into the river, where there's a risk that there could be a discharge, and they redirect that pipe through the use of a spills contingency plan to make sure that that went into a lagoon so that it did not actually go into the river, we prevented the adverse effect, which is pouring methyl ethyl ketone into a river. So it went into a lagoon. Now, the lagoon has been adversely affected, but we sure prevented the adverse effect to the river.

So you have to have spills prevention, which is engineering to make sure that spills don't happen by default. Then we also have to have spills contingency, because even in a perfect world, acts of God could create—like when we had the blackout—large discharges of contaminant to the air in the petrochemical valley.

Mr. Marchese: I just wanted to disagree with the parliamentary assistant, including the policy folks who disagree with me, that it's hard to prevent an adverse effect. It's almost impossible to prevent it, in spite of the explanation provided by Doug on this matter.

The second point I wanted to make on this is there's no time frame. Is there a reason why you don't want to include a time frame? I know it's in regulation, and God bless, it might happen before you guys are out. I don't know. Is there a sense of why we don't want a time frame?

Mr. Wilkinson: It's the opinion of the government that regulation is the best way to make sure that we have the posting of any potential regulation on the EBR, make sure that we have public content and make sure that we have a fair and equitable application of any government regulation in this province.

The Chair: Shall the amendment carry? Carried.

On page 19, Mr. Barrett.

Mr. Barrett: Page 19 is a PC motion with respect to jurisdiction.

I move that section 1 of the bill be amended by adding the following subsection:

“(14.1) Subsection 92(1) of the act, as amended by the Statutes of Ontario, 2002, chapter 17, schedule F, table, is amended by adding the following clauses:

“(b.1) the council of the band for each reserve, as defined in the Indian Act (Canada), within the boundaries of which the spill occurred;

“(b.2) the Department of the Environment and the government of Canada.”

Again, what was driving me on this is the issue where—

The Chair: The Chair would like to clarify: You meant to read, “the Department of the Environment of the government of Canada” and not “and the government of Canada.” Correct?

Mr. Barrett: I don't see that here.

1640

The Chair: You said “Department of the Environment and the government of Canada”; you meant “of the government of Canada.”

Mr. Barrett: Yes, there's a typo in this. Sorry about that.

No, I'm sorry. I'm talking about the Department of the Environment.

The Chair: The Department of the Environment “of” the government of Canada.

Mr. Barrett: Yes, the federal—

The Chair: OK.

Mr. Barrett: Environment Canada.

The Chair: When you read it, you said, “and the government of Canada.”

Mr. Barrett: Oh, did I?

The Chair: OK. Just ensuring that you're reading what you meant in your amendment.

Mr. Barrett: Yes, we're referring to Environment Canada in that case.

The Chair: Thank you. Carry on.

Mr. Barrett: I'm not only talking about the St. Clair River. We know that if something gets in the water, it could be on the Michigan side, even though it came from the Ontario side, or I have visions of, say, a US-registered tanker off the tip of Long Point on Lake Erie, which is in Canada.

Again, it's the whole issue of jurisdictional confusion. When spills occur here and there, maybe the fire truck is the first one on the scene. Now that's municipal. The Ministry of the Environment ideally would show up rapidly, along with industry cleanup crews. Maybe later on, Environment Canada would arrive. If it impinged on state of Michigan waters or shoreline—I understand, in speaking with legal counsel on this, that it is just about impossible, within provincial legislation, to have that kind of relationship with, for example, the state of Michigan. I guess there are a number of reasons for that, and we have international joint commissions and other measures. Of course, Michigan has a different system for reporting and detection and what have you.

A number of states actually have very good systems. The Ohio River, for example, touches on a number of states, and I understand they try to work together to get over some of this jurisdictional confusion, when you really maybe have only a matter of hours to remediate what has happened.

This makes reference to Environment Canada, and it also makes reference to native communities. I think of Walpole First Nation. They've taken a beating on some of these spills. I don't know to what extent this consultation involved native communities. I've put this forward to attempt to ensure that there is that kind of coordination. It gets kind of difficult. You've got a provincial Ministry of the Environment, and then on a native reserve you would be dealing with both the federal Department of Indian and Northern Affairs and Environment Canada. So that's the issue that I've raised.

There is evidence in the past of jurisdictional confusion, and regrettably, that could slow down the response to the spill, or it could even slow down the initial notification of the spill. For that reason, I have made this motion.

Mr. Wilkinson: First of all, I want to thank the member for bringing this forward. Again, that whole issue about native reserves was something that was brought up in the IPAT.

This motion, as far as we can see, would amend the spills notification provisions so that (1) if a spill occurs on an Indian reserve, then the local band council must be notified; and (2) the federal Department of the Environment be notified.

I want you to know, Mr. Barrett, that we're not operating in a vacuum here. We have a constitutional issue. The province may not have the constitutional authority to regulate spills that take place on Indian reserves; therefore, there is a risk that this notification provision may not be enforceable. Further, the Canadian Environmental Protection Act already regulates notification when an environmental incident takes place on an Indian reserve under their jurisdiction. The ministry's Spills Action Centre has entered into a memorandum of understanding with Environment Canada that the province will receive notification on behalf of Environment Canada and, in certain circumstances, that Environment Canada will be notified. For instance, if the spill is on reserve land or federal land, then the memorandum of understanding specifies that the Spills Action Centre notify Environment Canada. So it doesn't matter who gets the notice, we make sure the other side knows about it.

The way spills notification works is that notification to the Spills Action Centre in this province is required, and they make a determination of which persons or bodies require notification in the circumstances, such as which drinking water facilities require notification.

Further to your question about our neighbours in the Great Lakes basin, we have memorandums of understanding with our Spills Action Centre and all of our neighbouring states in the Great Lakes basin, because of the great work that has been done with the charter and the International Joint Commission.

I understand your concern, particularly given IPAT. But we fear to tread, as a province, into a federal matter, particularly with sovereign members of our society who are on a federal reserve.

So, though we appreciate the amendment, as a government, we would have to vote it down.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(15.1) Section 92 of the act, as amended by the Statutes of Ontario, 2002, chapter 17, schedule F, table, is amended by adding the following subsection:

“Same

“(5) The notices required by subsections (1) and (4) shall be given in accordance with any requirements prescribed by the regulations.”

For my colleagues, this motion will provide authority to make regulations specifying what information persons must report when they are required to notify the ministry of a spill.

We discovered from deputants that six months after a spill, a company could say, “Oh, by the way, we had a spill, so we notified you.” This has to go with the fact that if you have a spill, you've got to call us and you've got to say who you are, what you spilled, when it happened and what you are doing. This strikes us as a huge loophole.

We feel that this is very important. I'm sure we would have all-party support on this motion. It's just the right thing to do.

Mr. Hardeman: I just have a question about the timing of it. I agree with you that there has to be a time frame; there has to be a connection between the event and the notification. If we have a time limit and we know that it needs to be quite close to it, why can we not legislate that, as opposed to by regulation? Do you have a need for different time frames for different types of spills?

Mr. Wilkinson: I think the problem we would have is that, as we all know, the legislative process can be somewhat time-consuming. We need to be able to respond. If we put on the EBR, “Here's how we think. This is the information we need,” and other people look at it and say, “Hey, you're missing something here,” then we need to be able to, by regulation, just repost it and say, “OK, that's what we're going to do. As of this date, that's going to be the notice. You'd better make sure that these are the questions you'll be able to answer when you call us, and, specifically, when you have to call us. It's not going to be six months after the fact because you think that maybe our SWAT team is going to show up and inspect.” So that's the nature of this.

I believe that enshrining this in legislation without the ability to change it is not going to allow us to get at this as quickly as possible.

Mr. Marchese: So you're saying there can't be an easy protocol. “It's complicated, and there might have to be some changes, so we really can't work it out yet. We'll have to work it out as we go, because circumstances can vary from place to place.” Is that the kind of thing you're talking about?

Mr. Wilkinson: I think the whole issue has to do with the term “forthwith,” which is in those sections, that you have to get to it and do it. You don’t get to decide when you’re going to let us know. That’s what’s happening right now, and that’s what this amendment is all about.

Mr. Marchese: I agree, and because I agree with you, it would seem to me that it would be much simpler to create some protocol that says, “As soon as there’s a spill, you will have to provide the following information.” It seems easy to me, but maybe it’s more complicated than I think.

Mr. Wilkinson: It’s done by regulation. That’s the way to make that protocol happen that we agree on.

1650

Mr. Marchese: So that regulation, when it happens, whenever we institute it, will have some clear protocol at some point about what will have to happen? I’m assuming that’s what you’re saying. You’re probably agreeing with me, except you’re saying, “Yes, but we won’t put it in the bill, because we can’t, for a variety of different complicated reasons, but we will do it through regulation. Then it’ll be clear, because then we’ll have a better sense of what to do.” Is that basically what you’re saying, more or less, give or take?

Mr. Wilkinson: I think we have the legislative authority, but we don’t, unfortunately, have the regulatory authority to get at it. That seems to be the loophole here that has been used, and we’re trying to close that loophole.

Mr. Marchese: But if you have it in the bill, it happens immediately. You don’t need a regulatory authority; your authority comes from the bill. If you include it in the amendment, and then it gets passed as a bill, you’re done. You don’t have to worry about any regulation.

Mr. Wilkinson: But the existing legislation isn’t specific. So we rewrite that and try to be specific and think of all the things that could happen over the next 100 years, or we just give ourselves, by legislation, the regulatory authority to get on this problem, get it posted and get this new system instituted.

Mr. Marchese: I don’t understand. Why is it complicated? There’s a spill, and they immediately have to notify you, or notify the appropriate authorities, and that’s complicated?

Mr. Wilkinson: It’s beyond notification. We have companies that notify us but don’t tell us what it is they spilled.

Mr. Marchese: So why can’t we say “the same day that it happens”? Why can’t we say that?

Mr. Wilkinson: We also need to know what, sir. It isn’t enough to say, “We spilled something,” and “Come on; whenever you feel like it, come and tell us.” We need to know what it is they think went in the water, went in the air, went on the land. We need to know what that is, because there’s a tiered response, obviously. We heard deputations that there were 35,000 spills reported last year, of which 3,900 were considered to be quite serious.

We’re on a basis where we say to people that they have to notify us, but there’s no regulation that we have,

which is what this amendment is all about, to say, “By the way, when you do it, this is what you have to tell us.” I don’t think we need to have a law; I think we need to have the regulatory authority, through this legislation, to make that happen. If we need to amend it, we have the ability to do that. And of course that would go through the EBR process, like everything else in this province.

The Chair: Mr. Hardeman?

Mr. Hardeman: I don’t object; I agree with the parliamentary assistant’s suggestion that you need a protocol of how and when it needs to be done, but I’m a little concerned that it’s strictly in regulatory, that the bill doesn’t deal with it. It needs to be done now. I don’t know what the next Minister of the Environment is going to say. Maybe they think, “In order to make certain groups of people happy, we’re going to give a six-month time frame to do it in.” I think if we’re going to protect our environment, we need to include something in the bill that says, “Immediately, you must report, according to regulations,” as opposed to just saying—

Mr. Marchese: But what do we know?

Mr. Hardeman: Obviously not.

Mr. Wilkinson: Mr. Hardeman, some previous Minister of the Environment proposed a bill that was passed by the Legislature that said that people had to notify, without any specifics as to what, when, who, where and how it happened, and what you are doing about it. It seems to me that that was the legislative oversight that we are fixing by making sure we have the regulatory power in regard to that section. I don’t think we have to go all over to take this out of the bill, try to find another bill and spend months and months and months trying to think of everything that needs to be—all we would do is say, “Oh, and what you have to tell us is going to be prescribed by regulation.” That’s an authority we don’t have. That was a previous Minister of the Environment who came up with that bill; we’re just fixing it right here.

Mr. Marchese: So while we give you this regulatory power, what you’re saying is, once we do that, it won’t take months to establish a protocol because you’ll have the regulatory power. Is that what you’re saying?

Mr. Wilkinson: It’s also my understanding of the law in this province, in regard to environmental law, that if the government is going to post regulation, it has to be posted on the EBR. My understanding is that we could post something within 30 days. I can assure you, as we are maybe two weeks from the end of this session, that there will not be a legislative solution to this regulatory oversight problem that couldn’t be done in 30 days. I think it’s just a quicker way to get to the promised land that we all agree to.

Mr. Marchese: We want to get to it. I’m just assuming that by giving this regulatory power, we’re going to move quickly, because that power will give us the clarity to be able to act as quickly as we can, right?

Mr. Wilkinson: If we don’t, I’m sure you’ll bring it up with my minister.

The Chair: Presumably, we can't reach it unless we decide on the amendment. Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsections 1(16) to (19) of the bill be struck out.

By striking out these sections, I want to tell my colleagues that these provisions of part X will not be altered by the bill; i.e., they will retain the "likely" threshold in these provisions.

The Chair: Discussion?

Mr. Marchese: For the record, I'm voting against.

The Chair: Thank you.

Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(19.1) Subsection 95(1) of the act is amended by striking out 'any duty imposed or order or direction made or given under this part' in the portion before clause (a) and substituting 'the duty imposed by section 93 or an order or direction made or given under this part.'"

For my colleagues, this motion clarifies that the right of entry granted by section 95 applies to the duty to cleanup under section 93. It does not apply to other duties imposed by part X. The government will be voting in favour of this motion.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsections 1(20) to (27) of the bill be struck out.

Again, by striking out these subsections of the bill, these provisions of part X will not be altered by the bill. In other words, we are retaining the "likely" threshold in these provisions. We'll be dealing, obviously, with the next portion.

Mr. Marchese: I'm voting against.

The Chair: Noted.

Shall the amendment carry? Carried.

Mr. Wilkinson.

Mr. Wilkinson: I move that subsections 99.1(5) to (7) of the Environmental Protection Act, as set out in subsection 1(28) of the bill, be struck out and the following substituted:

"Joint and several liability

"(5) Where two or more persons are liable to pay costs or expenses pursuant to an order under subsection (1), they are jointly and severally liable to Her Majesty in right of Ontario.

"Contribution and indemnity

"(6) Where the director is entitled to issue an order to two or more persons under subsection (1) in respect of costs or expenses, as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:

"1. Where the director is entitled to issue an order to two or more persons under subsection (1) in respect of

costs or expenses and one or more of them caused or contributed to the costs or expenses by fault or negligence, such one or more of them shall make contribution to and indemnify,

"i. where one person is found at fault or negligent, any other person to whom the director is entitled to issue an order under subsection (1), and

"ii. where two or more persons are found at fault or negligent, each other and any other person to whom the director is entitled to issue an order under subsection (1) in the degree in which each of such two or more persons caused or contributed to the costs or expenses by fault or negligence.

"2. For the purpose of subparagraph 1 ii, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the director is entitled to issue an order under subsection (1) caused or contributed to the costs or expenses, such two or more persons shall be deemed to be equally at fault or negligent.

"3. Where no person to whom the director is entitled to issue an order under subsection (1) caused or contributed to the costs or expenses by fault or negligence, each of the persons to whom the director is entitled to issue an order under subsection (1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.

"Enforcement of contribution

"(7) The right to contribution or indemnification under subsection (6) may be enforced by action in a court of competent jurisdiction.

"Adding parties

"(8) Wherever it appears that a person not already a party to an action under subsection (7) may be a person to whom the director is entitled to issue an order under subsection (1) in respect of the costs or expenses, the person may be added as a party defendant to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of court for adding third parties."

For clarification for my colleagues, a person responsible for a spill, as defined in part X of the EPA, is jointly and severally liable for expenses in a cost-recovery order. After paying such costs, this motion ensures that such a person can seek contribution and indemnification from any other potentially responsible person. This ensures that the contribution and indemnification rules for a cost-recovery order are consistent with the existing provisions in part X. Again, this makes sure that we have an equitable distribution of the same rights to all parties in these types of matters.

The Chair: Shall the amendment carry? Carried.

1700

Mr. Wilkinson: I move that subsection 100.1(6) of the Environmental Protection Act, as set out in subsection 1(30) of the bill, be amended by striking out "Subsections 99.1(5) to (7)" at the beginning and substituting "Subsections 99.1(5) to (8)."

This motion fixes cross-referencing to the contribution and indemnification provisions that we just dealt with in section 99.1.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(31) of the bill be struck out.

For clarification, this motion will restore the “likely” threshold to the provision dealing with what can be required in a control order.

The Chair: Discussion?

Mr. Marchese: For the record, New Democrats prefer the higher threshold of “may” and will oppose this.

The Chair: So noted. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(32) of the bill be struck out and the following substituted:

“(32) Clause 132(1)(b) of the act is amended by striking out ‘alternate water supplies’ and substituting ‘temporary or permanent alternate water supplies.’”

This motion will restore the “likely” threshold to this provision, which deals with financial assurance requirements for approvals and orders.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(33) of the bill be struck out and the following substituted:

“(33) Clause 132(1.1)(b) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out ‘alternate water supplies’ and substituting ‘temporary or permanent alternate water supplies.’”

This deals with returning to the “likely” threshold. This provision deals directly with the financial assurance requirements for property use, which is another part of the EPA.

Mr. Marchese: Mr. Chair, I apologize, but what was the explanation for page 28?

Mr. Wilkinson: For reference, it was one of those “likely” ones, and I’m sure you would have voted against it.

Mr. Marchese: That’s right. To correct my record, we prefer “may,” which offers a lower threshold rather than the higher one. So I’m opposed to that and opposed to the page 29 amendment.

The Chair: Let’s try the voting threshold. Shall the amendment carry? Carried.

Mr. Wilkinson: I move that the French version of subsection 143(1) of the Environmental Protection Act, as set out in subsection 1(34) of the bill, be amended by striking out “d’une décision rendue ou d’un arrêté pris” in the portion before clause (a) and substituting “d’une décision ou d’une ordonnance rendue ou d’un arrêté pris.”

Again, this motion is required to make sure that we have conformity between the English text and the French translation.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 145.4(1) of the Environmental Protection Act, as set out in subsection 1(37) of the bill, be amended by striking out “the regulations made under clause 182.1(13)(d) governing the determination of the amounts of administrative penalties by the director” and substituting “the regulations made under clause 182.1(15)(d) governing the determination of the amounts of environmental penalties.”

For clarification, this motion removes the term “administrative penalties” from subsection 145.4(1) and replaces it with the term that we are using now, which is “environmental penalties.”

The Chair: Discussion? Shall the amendment carry? Carried.

Page 32, Mr. Barrett.

Mr. Barrett: I move that subclause 145.5(1)(b)(i) of the Environmental Protection Act, as set out in subsection 1(37) of the bill, be struck out and the following substituted:

“(i) an order made under section 182.1(1), or”

Maybe legislative counsel could help me on this. I’m assuming this relates to the concern of companies that a senior person would be charged with responsibilities to issue environmental penalties rather than a junior person, an inspector or someone who does site visits. That was the rationale behind that. I know we heard that concern in testimony.

Mr. Wilkinson: I would like to thank the member for offering the amendment, because we agree with you in principle, given what the deputants were telling us. Your motion would remove reference to provincial officer environmental penalty orders. I want you to know that our subsequent government motions that are coming up are removing any reference to authority to issue environmental penalty orders by provincial officers. Specifically, we’ll be moving to make sure that they’re at the director level or above, as requested by many parties. So we would not be voting in favour of it because we’ve got a government motion, number 66, that’s going to handle all of this.

Mr. Barrett: On page 66, is it?

Mr. Wilkinson: Yes, page 66 is the big one.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Wilkinson: I move that section 145.5 of the Environmental Protection Act, as set out in subsection 1(37) of the bill, be struck out and the following substituted:

“Onus for certain proceedings that relate to discharges

“145.1(1) This section applies to a hearing by the tribunal under this part if,

“(a) the hearing was required by a regulated person;

“(b) the order that is the subject of the hearing is,

“(i) an order made under subsection 182.1(1), or

“(ii) an order made under section 157, an order made under section 157.2 that amends an order made under section 157, or an order made under section 157.3 that confirms or alters an order made under section 157,

unless the contravention in respect of which the order is made is prescribed by the regulations made under section 182.1 as a contravention in respect of which an order may not be issued under subsection 182.1(1); and

“(c) the order that is the subject of the hearing relates to a contravention described in clause 182.1(1)(a).

“Contraventions of section 14

“(2) If this section applies to a hearing and the order that is the subject of the hearing relates to a contravention of section 14, the person who required the hearing has the onus of proving that the discharge of the contaminant into the natural environment did not cause and could not have caused an adverse effect.

“Contraventions of section 93

“(3) If this section applies to a hearing and the order that is the subject of the hearing relates to a contravention of section 93, the person who required the hearing has the onus of proving that,

“(a) the discharge of the pollutant was not abnormal in quality or quantity in light of all the circumstances of the discharge;

“(b) the pollutant that was spilled did not cause and was not likely to cause an adverse effect; or

“(c) forthwith after the pollutant was spilled, the person did everything practicable to prevent, eliminate and ameliorate the adverse effect and to restore the natural environment.

“Contraventions of other discharge provisions.

“(4) If this section applies to a hearing and the order that is the subject of the hearing relates to a discharge into the natural environment in contravention of a provision referred to in subclause 182.1(1)(a)(iii), (iv) or (v), the person who required the hearing has the onus of proving that the person did not contravene the provision.”

I want to share that reverse onus will be retained for specific types of environmental penalty orders and provincial officer orders. This motion amends the section to reflect other motions in relation to the threshold change in the EPA—from “likely” to “may”—and removes any reference to provincial officer environmental penalty orders.

The Chair: For the purpose of clarification, you referred to section 145.1(1) when I believe you meant section 145.5(1).

Mr. Wilkinson: I stand corrected by the Chair. It would take me half an hour to find that, sir.

Mr. McMeekin: I think you should read it all over again.

The Chair: We would need unanimous consent for such a motion. Hearing none, shall the amendment pass? Carried.

1710

Mr. Wilkinson: I move that subsections 150(5) to (7) of the Environmental Protection Act, as set out in subsection 1(39) of the act, be struck out and the following substituted:

“Joint and several liability

“(5) Where two or more persons are liable to pay costs pursuant to an order under subsection (1), (2) or (2.1),

they are jointly and severally liable to Her Majesty in right of Ontario.

“Contribution and indemnity

“(6) Where the director is entitled to issue an order to two or more persons under subsections (1), (2) or (2.1) in respect of costs, as between themselves, in the absence of an express or implied contract, each of those persons is liable to make contribution to and indemnify the other in accordance with the following principles:

“1. Where the director is entitled to issue an order to two or more persons under subsection (1), (2) or (2.1) in respect of costs and one or more of them caused or contributed to the costs by fault or negligence, such one or more of them shall make contribution to and indemnify,

“i. where one person is found at fault or negligent, any other person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1), and

“ii. where two or more persons are found at fault or negligent, each other and any other person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) in the degree in which each of such two or more persons caused or contributed to the costs by fault or negligence.

“2. For the purpose of subparagraph iiii, if it is not practicable to determine the respective degrees in which the fault or negligence of two or more persons to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs, such two or more persons shall be deemed to be equally at fault or negligent.

“3. Where no person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) caused or contributed to the costs by fault or negligence, each of the persons to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) is liable to make contribution to and indemnify each other in such degree as is determined to be just and equitable in the circumstances.

“Enforcement of contribution

“(7) The right to contribution or indemnification under subsection (6) may be enforced by action in a court of competent jurisdiction.

“Adding parties

“(8) Wherever it appears that a person not already a party to an action under subsection (7) may be a person to whom the director is entitled to issue an order under subsection (1), (2) or (2.1) in respect of the costs, the person may be added as a party defendant to the action on such terms as are considered just or may be made a third party to the action in the manner prescribed by the rules of the court for adding third parties.”

This ensures the contribution and indemnification rules for orders to pay costs and the contribution and indemnification provisions in part X have a uniformity of purpose.

The Chair: Discussion? Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(44) of the bill be struck out.

This is in regard to restoring the likely threshold for orders which provincial officers may issue to secure a scene.

Mr. Marchese: The NDP votes against it.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(44.1) Clause 157(1)(b) of the act, as re-enacted by the Statutes of Ontario, 1998, chapter 35, section 16, is repealed and the following substituted:

“(b) a provision of an order under this act, other than an order under section 99.1, 100.1, 150 or 182.1 or an order of a court; or”.

This motion will ensure that provincial officer orders cannot be used to enforce collection of orders that require the payment of money, like environmental penalty orders, or to enforce court orders.

Mr. Marchese: Could you repeat that, John?

Mr. Wilkinson: OK. We’ll just back up. This motion will ensure that provincial officer orders—so we have our officers from the ministry—cannot be used to enforce the collection of orders that require the payment of money, like an EP, or to enforce court orders. That should be a matter dealt with by the courts. We should not have our people with the authority to be doing that. That’s something, if it comes to those penalties—and there’s some disagreement, I would assume—that should go to the court.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(44.2) Section 157 of the act, as re-enacted by the Statutes of Ontario, 1998, chapter 35, section 16 and amended by 2001, chapter 17, section 2, is amended by adding the following subsection:

“Contravention of section 14

“(1.1) Subsection (1) does not apply to a contravention of section 14 unless,

“(a) an order to pay an environmental penalty could be issued in respect of the contravention; and

“(b) the contravention involves a discharge that causes or is likely to cause an adverse effect.”

Mr. Marchese: Explanation? Statement?

Mr. Wilkinson: It’s the same thing: “likely.” We’re just making sure.

The Chair: Just to correct the record, in your reading, under clause (1.1)(a), at the end of that, you said “and,” and I believe you meant “or.”

Mr. Wilkinson: It’s “or.”

The Chair: Thank you.

Mr. Wilkinson: You see, that’s why we have a Chair. He’s right on.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that clause 157(2)(b.1) of the Environmental Protection Act, as set out in subsection 1(45) of the bill, be amended by striking out “a contravention of section 14” and substituting “a contravention

of section 14 for which an order to pay an environmental penalty could be issued.”

For my colleagues, this motion clarifies when a provincial officer’s order has to describe the effects or potential effects of the discharge. This only has to be done when an environmental penalty order can be issued. We had discussion about the fact that an order should state what it’s about; it shouldn’t just come in and say, “Hey, by the way, you have an environmental penalty.” It’s required by us to state clearly what it is we’re issuing the order for. Again, industry and others came to us and said that this was not clear, and so the motion clarifies our intention.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(46) of the bill be struck out.

This restores the “likely” threshold when provincial officers can order a person to remediate a contamination.

Mr. Marchese: For the record, Marchese’s against it.

The Chair: So noted.

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that clause 157(3)(f) of the Environmental Protection Act, as set out in subsection 1(47) of the bill, be amended by striking out “may” and substituting “is likely to”.

Mr. Marchese: Marchese votes against it.

The Chair: So noted.

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsections 1(51) and (52) of the bill be struck out.

The Chair: Shall the amendment carry?

Mr. Marchese: Marchese votes against it.

The Chair: So noted. Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(53.1) The French version of section 164 of the act is amended by striking out ‘la propriété en l’état où elle’ and substituting ‘le bien en l’état où il’.”

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(54) of the bill be struck out and the following substituted:

“(54) Paragraph 4 of subsection 168.8(3) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out ‘alternate water supplies’ at the end of substituting ‘temporary or permanent alternate water supplies’.”

Mr. Marchese: Explanation again.

Mr. Wilkinson: This motion restores the “likely” threshold for when alternate water supplies can be required under an emergency order issued under part XV.I of the Environmental Protection Act.

Mr. Marchese: So Marchese’s voting against it.

Mr. Wilkinson: I would be shocked if you weren’t.

The Chair: So noted.

Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

“(54.1) The French version of clause 168.12(1)(d) of the act, as enacted by the Statutes of Ontario, 2001,

chapter 17, section 2, is amended by striking out 'd'une propriété' and substituting 'd'un bien'."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(55) of the bill be struck out and the following substituted:

"(55) Paragraph 4 of subsection 168.14(4) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'alternate water supplies' at the end and substituting 'temporary or permanent alternate water supplies'."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(55.1) The French version of clause 168.17(1)(d) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'd'une propriété' and substituting 'd'un bien'."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that subsection 1(56) of the bill be struck out and the following substituted:

"(56) Paragraph 4 of subsection 168.20(5) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'alternate water supplies' at the end and substituting 'temporary or permanent alternate water supplies'."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(56.1) The French version of clause 168.26(d) of the act, as enacted by the Statutes of Ontario, 2001, chapter 17, section 2, is amended by striking out 'd'une propriété' and substituting 'd'un bien'."

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(57.1) Subsection 176(1) of the act, as amended by the Statutes of Ontario, 1997, chapter 7, section 4, and 2001, chapter 17, section 2, is amended by adding the following clause:

"(x) governing the development and implementation of plans required under paragraph 7 of subsection 18(1) or section 91.1, including,

"(i) regulations requiring procedures to be followed, including procedures involving public consultation,

"(ii) regulations establishing time limits related to the development and implementation of the plans,

"(iii) regulations governing the contents of the plans, including requirements for provisions relating to updating the plans and testing compliance with the plans."

1720

The motion is complementary to the requirement in the bill for the development and implementation of spill contingency and spill prevention plans. It makes the necessary regulation-making authority.

The Chair: Shall the amendment carry? Carried.

Mr. Wilkinson: I move that section 1 of the bill be amended by adding the following subsection:

"(57.2) Clause 176(8)(d) of the act, as amended by the Statutes of Ontario, 2001, chapter 17, section 2, is

amended by striking out 'but no discharge of pollutant or location of discharge shall be designated' and substituting 'but no discharge of pollutant shall be designated'."

The Chair: Shall the amendment carry? Carried.

Mr. Barrett.

Mr. Barrett: This is a PC motion found on page 53.

I move that subsection 182.1(2) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out and the following substituted:

"Application

"(2) Subsection (1) applies to a person if the person is a corporation engaged in a business activity and,

"(a) the business activity is prescribed by the regulations; or

"(b) the corporation holds, is required to hold, or is exempted under this act from the requirement to hold a certificate of approval, provisional certificate of approval, certificate of property use, licence or permit under this act."

Again, my understanding of this motion—and I think it's essentially duplicated by the government motion on page 4?

Mr. Wilkinson: On page 66.

Mr. Barrett: Page 66. OK. Again, as I understand it, the corporation takes responsibility, not an employee or other individual. Any comment on this one?

Mr. Wilkinson: I would say to my friend Mr. Barrett that we agree in principle, but we'll vote against this because we feel that our motion on page 66, which will be read as an omnibus motion, will make sure that we've got all of our cross-references correct in this regard.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett.

Mr. Barrett: Chair, on page 54, you'll find a PC motion. I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

"Contraventions relating to discharges

"(2.1) If a contravention involves the discharge of a contaminant, no order shall be issued under subsection (1) in respect of the contravention unless the discharge causes or is likely to cause an adverse effect."

Again, there are discharges in industry for various reasons, including negligence or faulty equipment. Some discharges—say, if a portion of some ethanol was discharged into Lake Erie—would have less of a deleterious effect on aquatic organisms or fish or aquatic plants than, say, diesel. That's my understanding. Industry were concerned about the definition of a spill. They wanted a more clear, more scientific definition of a spill. That's my understanding of what we're getting at here.

Mr. Wilkinson: Mr. Barrett, in this regard, I will be voting against it. I would be surprised if Mr. Marchese also did not vote against it, because that would apply the "likely" threshold to environmental penalties, and as we've stated clearly, we want the "may" threshold in environmental penalties.

The Chair: Let's once again try the threshold: Shall the amendment carry? I declare the amendment lost.

Mr. Marchese: Mr. Chair, can I ask you a question? Is there a plan here in terms of determining what will happen if we don't finish these amendments by 6 o'clock? Procedurally, can you tell me what the plans are?

The Chair: If it is your will to adjourn at 6, then the clause-by-clause will resume at the next scheduled meeting of the committee.

Mr. Marchese: Oh, is that right? I thought we had only one day. That's great.

Mr. Miller: We have as much time as we want. We could spend days doing this.

Mr. Marchese: Oh, isn't that nice. That wasn't very clear.

Mr. Wilkinson: On behalf of my government colleagues, despite the fact that it's Thursday, I'm sure we'd love to stay and get this out of the way, but we'll just go with the rules.

Mr. Marchese: Thank you, Mr. Chair, for the clarification.

Mr. Miller: Just for clarification on the last portion, number 54, you're keeping "may," the lower threshold, on EPs and not "likely," in all cases?

Mr. Wilkinson: In all cases, yes.

Mr. Miller: There were deputants who came before the committee who spoke against having that. They wanted it changed to "likely," but you didn't think their arguments were worthy?

Mr. Wilkinson: As we mentioned at the beginning, in regard to environmental penalties, which are a civil administrative matter and not a criminal prosecution, it is the contention of the government that "may" is the appropriate threshold to protect the environment and not "likely." It should be "may," and that's our position.

Absolute liability is also part of this, but we'll get to that in a few minutes.

Mr. Barrett: I move that section 182.1 of the Environmental Protection Act, as set out in section 1(58) of the bill, be amended by adding the following subsection:

"Considerations

"(4.1) The director shall consider the following matters in determining the amount of the penalty:

"1. Preventative actions taken by the person who is required to pay the penalty.

"2. The costs of response, abatement and remediation incurred by the person who is required to pay the penalty."

I guess very simply the principle here is that there are—and I think the parliamentary assistant has referred to some companies that do a good job and some that are laggards. I feel it's really counterproductive to administer penalties on a company that is a first-rate company and has done everything to remain in compliance: conducts training, makes the investments in the plant and equipment and does its best to prevent these kinds of things from happening. I would be concerned if they are,

in a sense, penalized for that or are not given credit for that when a spill occurs, perhaps through no fault of an employee or equipment.

Mr. Wilkinson: I think it's an issue where we believe—and you'll see in subsequent amendments that the "must" requirement will be put in by regulation. The advantage of the regulation is that it ensures that that is transparent, open to the public and not left to the sole discretion of the director, where there will be no transparency. That's why we'll be voting against this. I'm sure we all recall how many people came here and asked that this whole process be transparent, and there will be a government motion in that regard shortly.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett: I move that subsection 182.1(6) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"Strict liability

"(6) No order shall be issued against a person under subsection (1) if,"

My motion ends here. I can make an assumption that it is the continuation of the previous one. I might ask for some advice.

1730

Mr. Beecroft: If you look at subsection 1(58) of the bill, it sets out this new section 182.1 of the Environmental Protection Act. Going down to subsection (6), the existing words in the bill read, "A requirement that a person pay an environmental penalty applies even if," You're changing that to say, "No order shall be issued ... under subsection (1) if," You're essentially reversing the meaning of this provision. The provision of the bill creates what's called absolute liability, and you're reversing that so that it's not absolute liability.

Mr. Barrett: Thank you for that. I wasn't clear.

Mr. Miller: So this motion, then, would change the definition of "liability" to "strict liability" versus "absolute liability," which of course we heard from many different deputants. If you look at your summary of recommendations to Bill 133 from the various groups, you'll note that under this section, the comments are, "Amend this section to recognize due diligence as a defence. We adamantly oppose absolute liability. Strict liability regimes which allow defences of due diligence encourage companies to put into place responsible environmental practices. Requiring corporations to pay after a spill without affording a defence of due diligence is akin to the imposition of a pollution tax. Due diligence has been the foundation of environmental risk management for the last 25 years."

You'll note that there are approximately 15 various groups that came before the committee and made that recommendation, and that's the purpose of this motion.

Mr. Wilkinson: Just for the record, I can assure you that the government will vote down this motion to a person. The heart of this bill, in regard to civil administrative penalties, is the imposition of absolute liability.

We have heard that over and over again. We looked at all of the US states that have civil administrative penalties. We are going to be swift of foot in this regard. The people demand that we are swift of foot. That is not possible with a strict liability regime. As the minister mentioned, we have done a great deal of research of all the other jurisdictions that have this. This is new for Ontario, but this is not new when it comes to our competitors around the world. We're just getting up to the standards that the good people of Ontario expect, which are environmental penalties and absolute liability.

Mr. Marchese: I just wanted to say that we agree with the Liberals on this one. We support the move to absolute liability and agree with the member when he says it is the backbone of this particular bill: You spill, you pay.

Mr. Miller: I note also that you had groups coming before you saying that due diligence should be a mitigating factor when assessing the value of an environmental penalty. Have you taken that into consideration at all?

Mr. Wilkinson: Well, there will be some other motions from the government in regard to how environmental penalties are assessed—whether they are settlement agreements, whether or not they are posted so that people can see them—and they'll be in subsequent motions.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Marchese, page 57.

Mr. Marchese: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsections:

“Publication before agreement

“(8.1) A proposal to enter into an agreement under subsection (8) is deemed to be a class II proposal for an instrument for the purposes of the Environmental Bill of Rights, 1993, unless the regulations under that act classify the proposal as a class I or III proposal for an instrument.

“Publication after agreement

“(8.2) If an agreement is entered into under subsection (8), the ministry shall publish notice of the agreement in a newspaper having general circulation in the part of Ontario affected by the agreement, setting out the following information:

“1. The name of the person with whom the director or provincial officer entered into the agreement.

“2. A summary of the contents of the agreement.

“3. The reasons that the director or provincial officer entered into the agreement.

“4. The effect of the agreement on the obligation to pay a penalty under this section or on the amount of the penalty.”

This amendment is aimed at ensuring that settlement agreements reached between the director and the corporation regarding an environmental penalty are made public. There is nothing that would prevent us from

agreeing to this, it would seem to me, but I'll hear an argument from the parliamentary assistant, no doubt. What we're saying here is very clear: It should be made public, there is nothing that would prevent any of this information from being made public, and everyone should know the four points that we listed, by way of information they ought to have.

Mr. Wilkinson: I want to state on behalf of the government that we agree in principle on the question of transparency. The only question is, how do we do that? We disagree that the best way to do that is just to publish it once or twice in a local paper. I think that the appropriate place to have this posted is on the Environmental Bill of Rights, where we have a permanent record.

The other advantage of the Environmental Bill of Rights is that the good people of Ontario have the ability to comment on anything posted on the Environmental Bill of Rights, so that they feel that they have the ability to have their voice heard on what we agree to, which is the transparency of settlement agreements. So we would not be voting in favour and will be providing an amendment subsequently about making sure that this stuff gets posted.

Mr. Marchese: I'm not sure what the disagreement is. I'm not sure there's any disagreement that it would be posted on the Environmental Registry established under the Environmental Bill of Rights. You agree with what we have here, except on the how, and then you say that it won't do just to put it once or twice in the newspaper and that we should do it in the form that you expressed. What prevents us from doing both? I don't get it.

Mr. Wilkinson: The best way for the government of Ontario to ensure that that information is publicly disseminated to everyone in Ontario is to post it on the Environmental Bill of Rights. If someone wants to take that public information and put it in the newspaper, wherever it is—I'm sure the Fifth Estate—

Mr. Marchese: Why couldn't we do it? Why can't we do it as well? I don't get it. If somebody wants to do it, why can't we simply prescribe that that be done?

Mr. Wilkinson: Because we're going to put it in one place where everybody can see it, not just one local place. So it seems to me that that is the right thing for the government to do.

Mr. Marchese: And all I'm saying is, why can't we do both, rather than one or the other?

Mr. Wilkinson: Well, if you have the one where everybody gets to see it, then what you want can happen. If we don't put it on the EBR, then it isn't public knowledge. We're going to ensure that it is public knowledge, that people can comment, and if people want to report on that, because it's on the Environmental Bill of Rights, everyone will know that there's one place to go to to make sure that that is available to everybody in the province of Ontario.

Mr. Marchese: Here's the problem that I'm having with what you're saying. You can make it available and post it on the environmental registry. What you're saying is that everyone will know, because it's there. All we're

saying is that you would include this information and that it be made locally available as well, so that you don't necessarily have to go into that registry to see it, although it might be easy for people to do that, if they want; you're quite right. But if it's posted and we print it out and it's available in that area and people know about it, they're more likely to know about it if it's in a paper or two, once or twice. What I'm saying is, it doesn't detract from one or the other—both are complementary—and you're saying no.

Mr. Wilkinson: That's right. The government will put it on the government Web site, and the fifth estate will report it in the media. We're going to do what we do, and we're going to let the fifth estate do what they do.

Mr. Marchese: I want a recorded vote, please.

The Chair: Recorded vote.

Ayes

Marchese.

Nays

Barrett, Cansfield, Flynn, McMeekin, Miller, Peterson, Wilkinson.

The Chair: I declare the amendment lost.

Mr. Barrett.

Mr. Barrett: Page 59?

The Chair: Page 58.

Mr. Barrett: PC motion on page 58.

I move that subsection 182.1(9) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out.

It's my understanding that this is directed toward the concern over having provincial officers administering penalties. I may not be clear, because I'm relying on the wording.

1740

Mr. Wilkinson: The government appreciates the amendment in principle, but I'm sure that you'll see, when we get to page 66, that we're going to ensure that we will remove the authority for provincial officers to issue environmental penalties. By going with what we have on page 66, we're going to make sure that we keep the legislative integrity of the bill in regard to all of the references so we don't have to have even more amendments than we have right now.

Mr. Miller: So, if I'm clear, this amendment will ensure that environmental penalties would only be imposed by a director—

Mr. Wilkinson: Or above.

Mr. Miller: —or above, not the provincial officer. You're going to have that in your motion on page 66, further along.

Mr. Wilkinson: That's on page 66. But we agree in principle.

The Chair: Shall the amendment carry?

Mrs. Cansfield: Since so many of the amendments are similar to what the government is putting forward, I think that we actually should be putting up our hands, in terms of voting for or against amendments, and not making some assumptions. I just think it would make it clear and helpful for the people who are actually watching this proceeding.

Mr. Marchese: Nobody's watching the proceedings here.

Mrs. Cansfield: But they will be.

Mr. Marchese: If you want a recorded vote, you can ask for one.

Mrs. Cansfield: I'm not asking for a recorded vote. I just think that we should be able to vote without the assumption—

The Chair: If I understand the request correctly, Mrs. Cansfield is asking you to indicate your support or opposition to a vote on an amendment by simply raising your hand.

Mrs. Cansfield: Right. Thank you, Chair.

The Chair: OK. Let's try it again. Shall the amendment on page 58 carry? All those in favour? All those opposed? I declare the amendment lost.

By raising your hand, at least we'll know that you've actually zoned in to the meeting here.

Mr. Barrett: I have a PC amendment on page 59.

I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“No admission

“(10.1) If a person pays a penalty imposed under subsection (1) in respect of a contravention, the payment is not, for the purposes of any prosecution in respect of the contravention, an admission that the person committed the contravention.”

I think, essentially—and this was coming from a number of delegations—that the payment of an environmental penalty is not considered an admission of guilt and, I'm assuming, is not to be considered something that could be used against someone in court. But I'm not a judge or a lawyer.

Mr. Wilkinson: We don't accept this motion.

Government motions which replace the environmental penalty order sections, which are 182.1 of the EPA and 106.1 of the OWRA, specify that if a person is prosecuted for the same contravention, the payment of a penalty or the entering into a settlement agreement shall not be considered admission of guilt.

The Conservative motion is drafted more broadly, so that the issuance of environmental penalty orders can never be considered by a court, when sentencing a defendant, as part of the defendant's compliance history. At the moment, courts are permitted to consider the issuance of orders as part of the defendant's compliance history. Therefore, the Conservative motion is too broadly drafted and would constrain a sentencing court beyond what it is now permitted to consider.

This would also be inconsistent with the sentencing guidelines introduced by the bill, which are sections

188.1 of the EPA and 110.1 of the OWRA, which will require a sentencing court to consider a defendant's compliance history with environmental protection laws.

As a result, we would vote against this amendment.

Mr. Barrett: Are we meeting partway at all on any of the other 70 amendments on this issue?

Mr. Wilkinson: Yes, in subsequent government motions. But on this one, again, we have all of these other sections which would then have to be amended and renumbered.

Mr. Barrett: We can look forward to that in this package?

Mr. Wilkinson: Yes, subsequently.

The Chair: Shall the amendment carry? I declare the amendment lost.

Mr. Barrett: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“Repayment

“(10.2) If a person pays a penalty imposed under subsection (1) in respect of a contravention and, in a subsequent prosecution in respect of the contravention, the person is acquitted, the minister shall repay the amount of the penalty to the person.”

Very simply, if you pay a penalty for a certain infraction and you go to court and you're acquitted, you should get your money back. That's probably a very simple way of describing that.

The Chair: The motion proposed by Mr. Barrett is contrary to standing order 56 in that it would, if passed, specifically direct the allocation of public funds. Such a motion may be proposed only by a minister of the crown. The Chair must therefore declare the motion out of order.

Mr. Barrett: The government taketh, but does not return.

Just out of interest, if anyone felt that this is inappropriate—to fine somebody who turns out to be innocent—what measures within the province of Ontario are there for someone to get their money back?

The Chair: The motion having been ruled out of order, we can't entertain discussion on it. However, on page 61, you may introduce your motion there.

Mr. Barrett: I move that clause 182.1(13)(d) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by striking out “and governing the determination of those amounts by provincial officers” in the portion before subclause (i).

Chair, I refer that back to you; you were going to explain that.

The Chair: Comments?

Mr. Wilkinson: I think you were clarifying that 60 was out of order, so we couldn't discuss it any more, and now we're on 61. I can tell you again that we agree with the motion in principle, because we are saying that these things have to be done at the director level or above and not by provincial officers. That will be on page 66. We appreciate the amendment, but we'll be voting against it. We'll deal with it in 66.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

Mr. Barrett: I move that clause 182.1(13)(g) of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be struck out.

At this point, I'd like to ask legislative counsel for advice on this.

Mr. Beecroft: Clause 182.1(13)(g) is the power to make regulations prescribing circumstances in which a provincial officer may exercise the authority of the director to issue these environmental penalties. So you're proposing to strike out the reference to the provincial officer.

Mr. Wilkinson: Again, Mr. Barrett, we won't be able to accept this amendment, but we do agree in principle, because it goes to the issue of making sure at the director level, which we'll be at too on page 66.

The Chair: Shall the amendment carry? Those in favour? Those opposed? I declare the amendment lost.

1750

Mr. Marchese: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“Annual report

“(16) The minister shall, not later than March 31 in each year, publish a report that sets out the following information for each contravention in respect of which an order was made under this section during the previous year:

“1. The name of the person against whom the order was made.

“2. The amount of the penalty.

“3. A description of the contravention.

“4. An indication of whether an agreement was entered into under subsection (8) in respect of the order and, if an agreement was entered into, the effect of the agreement on the obligation to pay the penalty or on the amount of the penalty.”

I think it's self-explanatory. We think an annual report is necessary to pull all the information together for the purposes of evaluating the performance of environmental penalties. It's done in many, many other sectors that report to the government, and I am hoping and convinced that the Liberals will support this one.

Mr. Wilkinson: First of all, I would like to thank the member for Trinity-Spadina for moving this motion. We will accept it. I've had a nice chat with legislative counsel. My understanding is that if you would be prepared, after we deal with government motion 66—I believe legislative counsel could help you prepare to reintroduce this after page 66.

Mr. Marchese: I'll stand it down.

Mr. Wilkinson: That's great. Thank you. We'll be accepting it.

Mr. Marchese: I appreciate what the member's trying to do, but I would like to move this amendment because I wanted to oppose many of the amendments that are in 66. I understand they might want to defeat mine and

hopefully they will incorporate it in their own motion on page 66.

Mr. Wilkinson: Just so there's clarity, we appreciate the amendment and we will be adding it to the page 66 amendment.

If I might, Mr. Chairman, for the member from Trinity–Spadina, in regard to NDP motion 64, we will do that as written as well.

Mr. Marchese: The same logic will apply. I've got it.

Mr. Wilkinson: As written.

Mr. Marchese: Very good. I'll read it, yes.

Mr. Wilkinson: OK?

Mr. Marchese: That's fine.

The Chair: Shall the amendment carry?

Mr. Wilkinson: I thought it was withdrawn.

The Chair: We're discussing the amendment on page 63.

Mr. Wilkinson: I guess we have to defeat it, but then we're going to—

Mr. Marchese: That's right.

The Chair: So discussing the NDP amendment on page 63, shall the amendment carry? I declare the amendment lost.

Mr. McMeekin: Can I suggest a procedural motion? As members will recall, the House leaders met on Monday to determine that this committee would meet in an extraordinary session in order to consider the bill and the clause-by-clause discussion. So I'd like to move before 6—because I understand there may be some urgency to leave at 6—that this committee respectfully request that the House leaders meet to consider agreeing to meet again on Monday, May 30, to continue the discussion around the clause-by-clause issues. We would need the House leaders to do that, as I understand.

The Chair: So your motion is that the committee request the House leaders to meet to consider adding a meeting date of May 30.

Mr. McMeekin: Yes.

Mr. Barrett: I certainly concur that there is a need for more time. Usually the dates are set in a subcommittee meeting. The House leaders aren't going to be sitting here. I'm just trying to check my calendar. Is there a mechanism for us to determine whether that date is appropriate?

Mr. Wilkinson: I think that we have to leave it to the House leaders. Their job is to get volunteers. I know I'll be here.

Mr. Barrett: So it doesn't require a subcommittee meeting?

The Chair: If the full committee is here and it agrees to the recommendation, then there wouldn't be a need, procedurally, to reconvene the subcommittee to confirm what the entire committee has already agreed to.

Mr. Marchese: That's right. If there's agreement between us all here, we could do it without requiring the House leaders to meet. I have no problem with that, if the members agree.

Mr. Barrett: I just have a scheduling question. What was the date, again?

Mr. McMeekin: Monday, May 30.

The Chair: All those in favour of the motion? All those opposed? I declare the motion carried.

Mr. McMeekin: Let it be recorded that it was carried without a dissenting vote. I think that might be helpful to the House leaders.

The Chair: Let it be recorded that the motion was carried without a dissenting vote.

Mr. Barrett: With one abstention; I'm still looking at my BlackBerry to see what I'm doing that day.

Mr. Marchese: Mr. Chair, do we have time for one more motion?

The Chair: Go ahead and do motion number 64. You get the last word, unless you're really quick. We might be able to do another one, too.

Mr. Marchese: I move that section 182.1 of the Environmental Protection Act, as set out in subsection 1(58) of the bill, be amended by adding the following subsection:

“Five-year review

“(17) At least once every five years, the minister shall cause a report to be prepared and published on the operation of this section, including the effect of this section on prosecutions under this act and including recommendations on the contraventions to which and circumstances in which orders should be issued under subsection (1).”

This amendment calls for the environmental penalties section of the Environmental Protection Act to be reviewed once every five years in order to evaluate the performance of this instrument for preventing spills and its application and administration by the Ministry of the Environment. It would provide an analysis of the effect, if any, that the use of environmental penalties has on the number and nature of prosecutions by the Ministry of the Environment under the act.

Finally, it would seem to me that any sound policy instrument, like environmental penalties, should simply, as a matter of course, be exposed to a review every five years to ensure that it's satisfying its objective.

I think it's a great motion.

Mr. Wilkinson: Just for the record, as we mentioned before, the government will be voting down the motion, but we'll be introducing it as an addition to the motions contained on page 66 and throughout, just so that we get the numbers of all of these things correct for legislative posterity. We appreciate the amendment from the third party.

The Chair: Shall the amendment carry? All those in favour? All those opposed? I declare the amendment lost.

It is now 6 o'clock, and the time prescribed for this committee to meet has expired. I declare this meeting adjourned.

The committee adjourned at 1800.

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