

# Big brother is watching

By Doug Petrie

The Regulatory Modernization Act, 2007 (RMA) came in like a lamb in mid-January 2008. It has far-reaching consequences for the regulated community. Once regulations are in place, Ontario's government regulators and enforcers can share compliance and complaint-related information. Government ministries may also publish information on compliance and convictions against regulated companies on the Internet. Past convictions, even those dated before the RMA, will be used by the courts to increase fines for new convictions.

Beware: What your employees say to a Ministry of Labour inspector can also end up in the file of an MOE inspector. Companies with multiple points of contact with regulators should consider adapting their contact policies and training accordingly. One step is to appoint and train a compliance coordinator to manage contacts with all provincial regulators.

What a Ministry inspector doesn't discover during a sanctioned visit through the front gate, he might be able to finagle from another agency when he gets back to the office. That's because Ontario's new Regulatory Modernization Act, 2007 will allow staff from 15 ministries to share information and observations "likely to be relevant" to the enforcement or administration of a long list of acts and regulations.

The Act, proclaimed in force on January 17, 2008, will have little impact until the regulations come into force

later this year. The list of 15 ministries includes MOE, MOL and MNR. The list of almost 600 acts and regulations includes the EPA, OWRA, CWA, OHS, Mining Act and Aggregate Resources Act.

Ministers can authorize staff to:

- Collect, use and disclose information about compliance and complaints;
- Publish compliance and complaint information about a company, (including information collected before the RMA came into effect);
- Assemble inter-ministry field teams that could allow officers from one ministry to collect information for others during an inspection or audit.

Information sharing between agen-



**"A person who is lawfully present in a place in the exercise of powers or performance of duties under an Act or regulation and who makes an observation, visual or otherwise, that is likely to be relevant to the administration or enforcement of another Act or regulation may record the observation and disclose it to a person who administers or enforces the other Act or regulation."**

*Regulatory Modernization Act, 2007, s. 9(1)*

cies would not be so unsettling if every ministry followed the same investigative rules. But they don't. A provincial officer from the MOE has broad powers to access a site, ask questions and collect data on compliance and abatement. However, as soon as an officer begins to investigate an offence, he or she must obtain consent, or prepare a case and apply to the court for a search warrant

or an investigative order.

An "end-run" could be challenged in court as a violation of the Charter and an abuse of process. Success in court would be small comfort for the unlucky defendant stuck being the "test case."

The RMA permits more than just sharing of data. Ministries can form teams to target repeat offenders, and ministers can publish consolidated information about an organization's complaints and compliance record. Previous convictions for provincial offences under an unrelated law, including those occurring before RMA came into force, will be considered as factors to increase fines and penalties under environmental laws.

All of this means that plant person-

nel should be careful about what they divulge voluntarily to any inspector, and what they leave in plain view. From now on, all inspections should be considered multi-ministry inspections. Companies should be aware that regulators can share compliance data for approval or reporting purposes. Freedom of information confidentiality provisions should be invoked where applicable.

With the enforcement of some 85 statutes and almost 600 regulations loosely tied together under the Act, most businesses will be challenged to recognize the gaps in their compliance with each. Consider designating a single individual at each facility to serve as the compliance coordinator for all provincial regulatory contacts.

Every inspection should be considered a multi-ministry inspection.

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