

## Soft path planning needed to end myth of boundless water

By OLIVER M. BRANDES  
and DAVID B. BROOKS

Many Canadians still believe the myth that our fresh water resources are boundless.

The truth is that only a small proportion of our water is located where most of us live, and only a small proportion of it is truly renewable. Continuing with the current strategy of taking more and more water from nature, while ignoring wasteful use by consumers, will ensure an "arid" future of our own making.

A fresh approach is needed to secure a sustainable water supply for Canadians. The focus must be on ensuring that all "new" water comes from better use of existing supplies and from changes in attitudes and water habits.

Reducing water demand is not only a cheaper alternative to almost any other supply option, but it can be implemented more quickly and with much less environmental damage. Options that improve water efficiency abound: drip irrigation and water harvesting; reuse and recycling; and low-flow faucets, toilets, and appliances. These gains, however, are just the beginning of the water-saving story.

Going beyond efficiency, the soft path differs from other approaches to water planning. It starts by changing the conception of water as an end product to be delivered into water as the means to accomplish certain tasks.

For some tasks, it not only asks how to save water but why use water at all. The objective of water management changes from expanding and maintaining water supply infrastructure to providing water-related services, such as new forms of sanitation, drought-resistant landscapes, and rain-fed ways to grow crops.

Soft path planning looks 20 to 50 years into the future and proposes major changes to our water infrastructure, the way communities are designed, and the institutions that govern water management.

It typically identifies a range of policies and strategies that can be implemented today to reduce or even eliminate the need for further supply-side developments.

Simply put, the soft path offers a route to a sustainable future that ensures long-term ecological, economic and social prosperity.

Sometimes, where there's a way, there's a will. If soft path planning is built up with public participation and community management of water, it has every possibility of supplanting today's approach of building and maintaining costly and environmentally destructive water systems.

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*David B. Brooks is director of research at Friends of the Earth-Canada, and leader of a national water soft path project. Oliver M Brandes leads the water sustainability initiative at the POLIS Project on Ecological Governance at the University of Victoria, and is a member of the water soft path research team. Further reading about the soft path and details about the project can be found on the Internet at <http://www.foecanada.org/> and <http://www.waterdsm.org>*

## Bill 133 significantly expands officers' and directors' duties

By MIMI SINGH

The days are long past when the duties of a corporate officer or director in Ontario were limited to a duty of care and a duty of good faith owed to shareholders.

Their duties have grown considerably and continue to expand. Most recently, as part of its initiative to improve corporate conduct in the area of environmental protection, the government expanded the specific environmental duties of directors and officers and enhanced its enforcement tools under the *Environmental Enforcement Statute Law Amendment Act, 2005* (Bill 133).

Previously, under the *Environmental Protection Act* (EPA) and the *Ontario Water Resources Act* (OWRA), directors and officers were required to take all reasonable care to prevent the unlawful discharge of contaminants into the environment.

In Bill 133, the government imposes important new environmental responsibilities on directors and officers. It also clarifies that in a prosecution of an officer or director, the burden of establishing compliance with these duties is on the officer or director.

Sec. 194 of the EPA and Sec. 116 of the OWRA have been significantly expanded. Sec. 194 imposes liabilities on directors and officers not only to take reasonable care to prevent unlawful discharges by the corporation, but also for: failing to notify the ministry of a discharge of a contaminant, in contravention of the legislation or an approval; contravening Sec. 27, 40, and 41 of the EPA in respect of hauled liquid industrial waste or hazardous waste; contravening Sec. 93 (acting in response to a spill) or 184 (obstruction) of the EPA; failing to install, maintain, operate, replace or alter any equipment or other thing, in contravention of a certificate of approval, provisional certificate of approval, certificate of property use, license or permit under the EPA; or contravening an order under the EPA, other than certain orders relating to paying for expenses and monetary penalties.

Similar changes are made to Sec. 116 of the OWRA.

Section 194(2) of the EPA and Sec. 116(2) of the OWRA continue to provide that a person who fails to carry out a duty created by Sec. 194(1) and Sec. 116(1), respectively, is guilty of an offence. As a result, new offences have been created for breaches of the new duties on officers and directors.

Bill 133 also clarifies that an officer or director charged with an offence of failing to carry out a designated duty related to a violation by the corporation must prove that the duty was met.

In such a prosecution, the Crown will have to prove beyond a reasonable doubt that the corporation contravened the Act, and that the accused was an officer or director. The officer or director will then bear the burden of establishing, on a balance of probabilities, that he or she carried out the duty.

Directors and officers must familiarize themselves with their new duties, and consider environmental management strategies that demonstrate due diligence.

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*Mimi Singh is senior counsel with the Regional Municipality of Peel in Ontario.*