

## PEOPLE IN THE INDUSTRY

# FIGHTING WORDS

Pioneering environmental lawyer Dianne Saxe on her professional and personal battles

by Connie Vitello

Whatever you've heard about Dianne Saxe probably doesn't do her justice. She's a trailblazer for women in the legal profession, she's a tree-hugging hippie with a shrewd sense of business; she's all that and more. Not surprisingly, Saxe was recently recognized by Who's Who International Business Lawyers as one of the world's best environmental lawyers, among other honours.

Though she stands a mere five feet, two inches, she is a great force with a consistently high energy level that belies her 53 years. Her piercing blue eyes are always alert and focussed on the task at hand, which is essentially to help people understand and mitigate environmental risks and complex legal issues. She has done this with a finesse few can muster, for more than three decades. During

that time, armed with a LL.B., Ph.D. and a certified specialist in environmental law and dispute resolution, she has amassed a long list of achievements.

Over the years she has resolved numerous disputes with the environment ministry and has repeatedly headed off prosecutions, including for high profile hazardous waste cases in which the stakes were very high. She has obtained generous settlements of meritorious environmental claims, while she has negotiated the withdrawal of many claims or quick settlement on nuisance issues.

In addition, she has helped her clients avoid various nightmarish scenarios, helping property owners negotiate and implement innovative, cost-effective decommissioning plans with regulators and neighbours for the

most complex of sites. She has also persuaded federal, provincial and municipal investigators to close their files. And yet she also manages to make time for her pro bono clients.

Her award-winning 16-year old column — Legal Perspective — is a favourite with HazMat readers. Her professional papers and speeches are highly anticipated, but she also enjoys logging travel journals and a six-page family holiday card. Writing seems to be an existential necessity for Saxe.

### The apple doesn't fall far

Daughter of the late Morton Shulman, Dianne Saxe is a bred-in-the-bone fighter. One imagines that the dinner conversations at her childhood home were rarely dull.

Dr. Shulman, former crusading coroner, stock speculator, millionaire MPP, author and talk show host, was diagnosed with Parkinson's disease about 20 years ago. His discovery, Deprenyl, treated his symptoms and he turned the new wonder drug into a \$100-million pharmaceutical company. He also battled to get approval for a controversial new medication for treating impotence and cancer, improved health and safety regulations for construction sites, and compulsory seat belts.

"He had a great idea of justice and fought the good fight till the end," says Saxe.

At work: The view from the Saxe Law Office is of Casa Loma and a treed park, and in the distance, the Toronto business district and the CN Tower. A fitting view for an environmental champion with a keen sense of industry needs.

No slouch herself, when she was just 18 years old, Saxe was already making a name for herself at Osgoode Hall. She was one of a few women in the program and one of the very youngest at that.

But there wasn't any environmental law to speak of when she went to law school and even the environment ministries had yet to be born.

"I'm an ardent tree hugger. I love the outdoors and the natural world," says Saxe emphatically. "I have been canoe tripping since I was little, so the opportunity to help protect the natural world, which is everywhere under attack, was very appealing to me."

When she graduated, the closest she could get was the Ontario Ministry of Energy — where she worked from 1975 to 1985. She proceeded to the Ministry of Environment from 1985 to 1989, for a total of 14 years with the Ontario government.

### Room with a view

After her long career with the public sector, she fancied the idea of starting her own private environmental law practice. Like a true workaholic she also embarked on her doctorate degree at the same time.

She credits her husband, Stewart Saxe, and their partnership for helping her to achieve her goals. He's a distinguished lawyer in his own right, a managing partner of the Canadian offices of Baker & McKenzie LLP, a leading global firm.

"My husband has been a huge source of support for me, in every respect — financially, morally, mentally." (So, it's true what they say about every great woman!) She also credits help from relatives and hired help for enabling her to have a great career as well as raise three very successful children.

With her Dad teaching her how to fight and her husband showing her how to run a law office, there were few female role models to light the way for Saxe. But she sought inspiration where she could. Saxe cites environmental advocate and author Rachel Carson (of *Silent Spring* fame) whose vision was in many ways the spark for the environmental movement.



Saxe and the city: Dianne likes to walk the walk. She walks to work almost every day, often accompanied by Acorn. She's also the proud owner of a Honda Hybrid.

When asked about her most significant work, she recalls the amendment to the *Environmental Protection Act*, *Ontario Water Resources Act*, and the *Pesticides Act* in 1988. Says Saxe, "I had the pleasure of drafting that legislation which is when environmental enforcement got serious in Ontario." Today she's proud of her groundbreaking negotiations for the Evergreen Foundation, which will help create a centre for "nature in the city" at Toronto's Brick Works.

In terms of favourite court cases, she cites acquittals she earned for the City of Barrie and for Torcad, both environmental leaders that were prosecuted by the MOE. Her most challenging civil case involves "dozens of law suits, three interlocking groups of lawsuits and 30,000 pages of evidence, all over decades-old contamination from a gas station."

She also recalls the case of when a young naïve family bought a farm, literally from old MacDonald. "MacDonald had been paid 50 bucks a month for many years in the 1960s to take the most toxic carcinogenic sludge and put it in his gravel pit by a big company that subsequently washed its hands of the whole mess," says Saxe. The anger is still audible in her voice. MacDonald carefully concealed all this and sold the contaminated farm to the family. Five people died of cancer in the immediate vicinity but no one was ever able to prove the correlation. That is, until Saxe got her way with the case.

Few were as appropriate to take on such cases as Dianne Saxe. No stranger to challenging struggles, she has had to face some

pretty sizeable professional and personal hurdles in her path.

Certainly there were the professional hurdles involved in being one of the only women at law school and then later having her boss take her hard won job while she was on maternity leave. Moreover, Saxe has also had to fight the ultimate fight.

"When the doctor diagnosed me with thyroid cancer, I was looking at my calendar thinking, of all things, I'm too busy for surgery," recalls Saxe. "I came to my senses when the cancer started to block off my breathing."

She was told she might never speak or sing again. But her voice and strength did come slowly back, to her everlasting gratitude. She eventually made it back to court, with her ergonomic apparatus and microphone in tow ("all the required schmazzle") and even resumed her role as occasional cantor at her synagogue.

To keep healthy and fit Saxe exercises daily — swimming, canoeing and gardening in the summer and in the winter, using the elliptical machine, along with skating, cross country skiing and snow-shoeing. This summer, she is taking her daughter kayaking among icebergs in Canada's far north.

"I don't get enough time outside but I love the time that I do spend there," says Dianne. "At the end of the year when I try to sum up what I really value and hold dear, it's always the outdoor time that comes to mind."

However, she says that her walks have been a little more cumbersome lately. Acorn, her 13-year-old wheaten terrier has been lagging behind. "I guess this is part of getting old, he just doesn't want to be in a hurry." Reflecting on her frenetic pace over the years one can't help but think it will be quite some time before Saxe ever slows down. **HMM**

Connie Vitello is editor of this magazine.

This is the first feature for HazMat's new "People in the Industry" column, which will probe the interesting professional and personal aspects of industry leaders' lives. To make a suggestion for the new "People in the Industry" profile, e-mail Editor Connie Vitello at [connie@hazmatmag.com](mailto:connie@hazmatmag.com).



## Airborne Contaminants

Amendments for the next round of reporting



**“As part of its plans to harmonize the Ontario and federal air emissions reporting systems, the Ministry of the Environment announced a two-tiered harmonization plan.”**

Although there have been no regulatory changes made to Environment Canada’s National Pollutant Release Inventory (NPRI) for the 2005 reporting year, several simplifications have been made to Ontario Regulation 127/01 – Airborne Contaminant Discharge Monitoring and Reporting.

As part of its plans to harmonize the Ontario and federal air emissions reporting systems, the Ontario Ministry of the Environment (MOE) recently announced its two-tiered harmonization plan that affects reporting for 2005.

The first component was initiated under the *Ontario Environmental Protection Act* with the amendment of Ontario Regulation 127/01 – Airborne Contaminant Discharge Monitoring and Reporting (amended to O. Reg. 37/06) and the Step By Step Guideline for Emission Calculation, Record Keeping and Reporting for Airborne Contaminant Discharge revised February 2006). The amendments apply to owners and operators of facilities based in Ontario who are required to submit reports for the 2005 reporting year.

For the second component of its harmonization strategy, the Government of Ontario is pursuing a Memorandum of Understanding (MOU) with the federal government to implement various intergovernmental details of existing and future harmonization efforts. The intent is to report on emissions once, on one date, and with a single threshold, with the same reporting criteria, by a commonly defined facility and through a single common reporting system.

For the 2005 reporting year several interim amendments have been made to Ontario Regulation 127/01. These include the following changes to Ontario-specific reporting requirements as this information is already available through Environment Canada’s NPRI, the Ontario Independent Electricity System Operator (IESO) or Ontario’s Emissions Trading Regulation (O. Reg. 397/01 as amended by O. Reg. 193/05):

- The removal of various reporting sectors and NAICS codes from Table 1 of the Step By Step Guideline (be sure to check and verify whether or not the NAICS code(s) relevant to your facility is still listed);
- The removal of special rules applying to universities and colleges of applied arts and technology, or office buildings, hotels, shopping centres or similar commercial buildings;
- The removal of special reporting requirements regarding type of energy source and the amount of electricity generated by electricity generating facilities;
- The removal of the reporting criteria for the remaining substances on Table 2A of the Step By Step Guideline (only road dust remains) except the 3 MMBtu/h site-wide name plate capacity criteria, which pertains to all stationary (e.g., boilers and heaters) and mobile combustion discharge units at the facility, regardless of whether or not the units are

associated with producing road dust emissions. This should include normally used [unlicensed] on-site equipment such as bulldozers, but not [licensed] vehicles such as passenger cars and trucks used to transport people or off-site materials (however, these vehicles would be included in calculating road dust emissions from the facility);

- The removal of the “Below Threshold Limit” reporting requirement for Table 2A substances;
- The removal of Smog Period (May 1 to September 30) reporting; and,
- The removal of quarterly reporting.

A number of substances have been removed from Tables 2A and 2B of the O. Reg. 127/01 Step By Step Guideline. With the exception of road dust particulate matter (TPM, PM10 and PM2.5), the criteria air contaminants (CACs) and greenhouse gases (GHGs) from Table 2A of the Step By Step Guideline have all been removed (the CACs are already included under the NPRI Part 4 list of substances).

The Ontario Reg. 127/01 list of more than 70 substances previously included on Table 2B of the Step By Step Guideline but not covered by the NPRI has been reduced to 15 substances, on the basis that these substances present minimal risk to the environment and human health. The total list of reportable substances has been reduced to 16 substances.

In addition, the MOE’s OnAIR reporting system was discontinued to avoid duplication and inconsistency between data reporting through the NPRI and OnAir websites. As such, reporting of emissions under Ontario Reg. 127/01 and the NPRI program will be done through the national web-based One Window to National Environmental Reporting System (OWNERS). However, access to Ontario emissions data reported from 2001 to 2004 as well as all other relevant information will be available in the OnAIR Historic Repository.

The Ontario MOE’s long-term harmonization plans between the provincial and federal monitoring and reporting programmes include incorporating the substances from Ontario Reg. 127/01 that are of interest to Environment Canada into the NPRI after national consultation targeted for 2006 reporting data. This may result in the rescinding of O. Reg. 127/01 altogether, provided that an adequate number of substances are included in the NPRI. However, in the meantime, Environment Canada has agreed to accept emission reports from Ontario facilities for the 16 O. Reg. 127/01 substances, but under Ontario’s legal authority. **HMM**

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For a link to the NPRI, Ontario Reg. 127/01 and the OnAIR Historic Repository, please visit the “posted documents” section at [www.hazmatmag.com](http://www.hazmatmag.com).