

Conservation Ontario Submission to the Standing Committee on Social Policy Hearings on the proposed *Clean Water Act*



1. Introduction

The following comments are provided by Conservation Ontario on behalf of the network of 36 Conservation Authorities in Ontario. Conservation Authorities are local, watershed management agencies that deliver services and programs to protect and manage water and other natural resources. Conservation Authorities work in partnership with municipalities, other environmental agencies, landowners, and other stakeholders. Conservation Authorities use integrated, ecologically sound environmental practices to manage water resources on a watershed basis, maintain secure supplies of clean water, protect communities from flooding, and contribute to municipal planning processes. Conservation Ontario was pleased to be a member of the Province's Advisory Committee on Watershed-based Source Protection Planning, the Technical Experts Committee, and the Watershed-based Source Protection Implementation Committee.

Conservation Ontario strongly supports the proposed *Clean Water Act*. We believe that there are strong economic, public health, and environmental benefits to providing clean and plentiful supplies of drinking water in Ontario.

2. Key Issues

The following comments, focused on four key issues, are intended to strengthen the *Clean Water Act* by providing further clarification on key aspects of the draft legislation.

Integrated Approach

In Ontario, water management is highly fragmented and administratively complex. While the Ministry of Environment and the Ministry of Natural Resources are the key ministries involved in water quality and quantity, a number of other ministries and agencies are responsible for aspects of water management. Ontario does not have a formal integrated framework for managing water resources. This lack of integrated provincial water strategy and the fragmentation of water responsibilities leads to uncertainty about specific water management roles and responsibilities and has resulted in inconsistent links between planning and implementation.

In his report on the Walkerton Inquiry, Justice Dennis O'Connor recognized the need for an integrated approach, emphasizing "that a comprehensive approach for managing all

aspects of watersheds is needed and should be adopted by the Province. Source protection plans should be a subset of the broader watershed management plans.”¹

Other Provinces such as British Columbia, Alberta, Manitoba, Quebec, and Nova Scotia have recognized the importance of developing an integrated strategy for water management. These Provinces have developed, or are in the process of developing, integrated water resource management strategies.

Conservation Ontario believes that integrated water resources management is best achieved through the development of a comprehensive water management strategy for the Province. However, in the absence of a provincial water strategy, it is essential that the source protection planning framework clarify the relationship between source water protection planning and broader watershed planning and management. Failure to establish linkages to other water management activities may miss the opportunity for broader benefits and it is quite possible that the needs for other uses will actually be undermined.

The *Clean Water Act* should not be an isolated initiative. It must build on the long history of watershed planning and management in Ontario. Conservation Authorities, municipalities, provincial agencies, and non-governmental organizations have extensive experience in sharing information and managing joint projects to advance knowledge about water issues. Conservation Authorities have also established programs focused on watershed management, water quality and quantity protection, habitat protection and ecosystem regeneration, environmental land use planning, sensitive land protection, and agricultural/rural landowner assistance.

Both the Technical Experts Committee and the Source Water Implementation Committee which reported to the Minister in November 2004 recommended an integrated approach. Under its guiding principles the Technical Experts Committee stated, “The provincial government should adopt an integrated and coordinated strategy for overall water protection and management across all provincial ministries and agencies.”² The Implementation Committee stated, in recommendation 5, “The provincial government and source protection committees should work with relevant parties to ensure that the development and implementation of source protection plans are integrated with water management and protection programs administered by all levels of government.”³

Opportunities for synergy with existing water management policies and programs must be identified with a focus on the need to avoid conflict between programs. Ensuring integration of and consistency between existing programs is essential to successful source water protection planning and implementation.

¹ The Honourable Dennis R. O’Connor. 2002. Part Two Report of the Walkerton Inquiry (pg. 9).

² Technical Experts Committee. 2004. Watershed Based Source Protection Planning. Science-based Decision Making for Protection Ontario’s Drinking Water Resources: A Threats Assessment Framework (pg. 6).

³ Implementation Committee. 2004. Watershed Based Source Protection: Implementation Committee Report to the Minister (pg. 16).

Proposed Changes to Clean Water Act

Section 1 of the proposed *Clean Water Act* currently states: “The purpose of this *Act* is to protect existing and future sources of drinking water.” A “Principles” section (which has been used in other pieces of Provincial legislation) is recommended in order to address the need for an integrated approach recognizing the linkages between source water protection and other water management programs. Conservation Ontario recommends the following additional wording:

- “In following with the purpose of this *Act*, source protection planning and implementation shall be undertaken consistent with the following principles:

In the administration of this *Act*, the Government of Ontario, the Minister, and all bodies subject to the provisions of the *Act* shall strive for integration of this *Act* and other water management policies and programs.”

- Within Section 13(2) add a clause stating “identify other water management issues and programs within the watershed”.
- Within Section 19 add a clause stating “In preparing the source protection plan the SPC shall consider the relationship between drinking water source protection recommendations and other water management issues and programs in the watershed.”

It is strongly recommended that Regulations for the terms of reference, assessment report and source protection plan also specifically address a requirement for integration in order to recognize other water management programs or policies including watershed/subwatershed management plans, watershed stewardship programs, etc.

In addition to the proposed amendments within the *Clean Water Act* and associated Regulations, the Province is strongly urged to develop an integrated provincial water strategy framework. Conservation Ontario urges the Province to use this strategy to clarify the roles and responsibilities of the Provincial Ministries, municipalities, conservation authorities, and other agencies with respect to water management in general, and the protection of drinking water specifically. An integrated water strategy framework should guide the coordination and streamlining of existing legislation, policies, and guidelines into a comprehensive format in support of a collaborative, interagency, interdisciplinary approach to water management. This process will help to identify current conflicting and/or competing policies. The strategy should define the vision, goals, objectives, and guiding principles of the Provincial government regarding water and address current fragmentation of management responsibilities.

Non-Municipal Water Supplies

Nearly 3 million Ontario residents, or about one out of three residents, rely on non-municipal drinking water supplies (both wells and surface water intakes).⁴ Justice O'Connor noted that for these residents source protection is often the only barrier available to protect their drinking water.⁵ In addition, there are numerous non-residential drinking water supplies operated by schools, churches, community halls, and other facilities which are used by the public. The Technical Experts Committee concluded that private rural wells... had an unacceptable frequency of microbiological contamination”⁶.

In its current form, the *Clean Water Act* does not provide protection for non-municipal drinking water supplies. While Sections 8(3) and 13(2)(e) provide municipalities with the ability to require that the terms of reference consider any existing or planned drinking water system (i.e. non-municipal drinking water supplies), this will only protect a small minority of non-municipal drinking water users. There is currently no mechanism for lower-tier municipalities or a group of rural landowners to ensure that their non-municipal water supplies are included in the Assessment Report and Source Protection Plan unless approved by the upper-tier municipality.

Conservation Ontario is not recommending additional regulatory measures; however, there are a number of other tools that can effectively protect private sources, as discussed below. Responsibility for non-municipal systems should remain the responsibility of the owner; however, the drinking water sources often extend beyond an individual landowner's property and therefore protection of these sources is beyond their control. Conservation Ontario supports an approach that is consistent with recommendation 115 of the Source Water Implementation Committee which called for an integrated approach for efficient and effective source protection for private well protection.⁷ Source protection committees should be mandated to include source protection for all non-municipal water supplies (both wells and surface water intakes). Addressing this need through specific reference to non-municipal drinking water supplies in terms of reference, assessment reports, and source protection plans would achieve this intent. The legislation should require source protection plans to include specific recommendations (e.g. programs and incentives) which encourage better management of non-municipal wells and surface water intakes.

Proposed Changes to the *Clean Water Act*

Conservation Ontario recommends specific amendments or additions to the *Clean Water Act* within Sections 8 (terms of reference), Section 13 (assessment reports) and Section 19 (source protection plan – preparation) in order to strengthen the ability of source water protection plans to address non-municipal water supply systems.

⁴ Statistics Canada, 2001.

⁵ The Honourable Dennis R. O'Connor. 2002. Part Two Report of the Walkerton Inquiry (pg. 89).

⁶ Technical Experts Committee. 2004. Watershed Based Source Protection Planning. Science-based Decision-making for Protection Ontario's Drinking Water Sources. A Threats Assessment Framework. Technical Experts Committee Report to the Minister of the Environment. (pg, 72)

⁷ Implementation Committee. 2004. Watershed Based Source Protection: Implementation Committee Report to the Minister (pg. 69).

- Amend Section 8 (3) to read: “The council of a municipality in which any part of the source protection area is located may pass a resolution requiring the terms of reference to provide, for the purpose of subclause 13 (2) (e) (ii), that the assessment report consider any existing or planned non-municipal drinking-water system specified in the resolution that...”
- Add a clause under Section 8 which provides a mechanism for lower-tier municipalities or a group of rural landowners to appeal to the Source Protection Committee to include their non-municipal supply in the Assessment Report and Source Protection Plan.
- Add an additional clause to Section 13(2) stating: “describe the extent and nature of non-municipal drinking water systems in the watersheds”.
- Amend Section 13(2)(e)(ii) to read: “existing and planned non-municipal drinking-water systems that, pursuant to resolutions passed under subsection 8 (3), the terms of reference provide for the assessment report to consider.”
- Add an additional clause to Section 19(2) stating: “A program of actions, focused on incentive, education and best management activities, designed to enhance the protection of drinking water sources used by non-municipal water systems”.

Source Water Protection Plan Implementation

The *Clean Water Act* proposes a locally-led, cooperative, plan development process that emphasizes strong public and stakeholder consultation. This requires a planning process with enough flexibility to allow the Source Protection Committee latitude in reaching a consensus-based plan. It also requires a complementary implementation framework. CO is concerned that the process, as proposed in the *Clean Water Act* is quite prescriptive with a focus on regulatory based implementation. A consensus-based approach requires a full range of implementation tools, with particular emphasis on voluntary and incentive-based options.

The *Clean Water Act* needs to recognize the broad range of implementation tools available to protect drinking water sources. In their report to the Minister of the Environment in November 2004, the Watershed Based Source Protection Implementation Committee indicated that a continuum of tools could be used. The Committee recommended the use of tools ranging from binding or formal approaches (e.g. legislation and regulations) to more informal approaches such as voluntary mechanisms. The Committee suggested that these tools should be used to complement one another. For example, education should always be employed whether it is in conjunction with regulation and enforcement or voluntary best management practices.⁸

The instruments prescribed under the proposed *Clean Water Act* should be seen as only one available implementation tool. Conservation Authority experience has shown that

⁸ Implementation Committee. 2004. Watershed Based Source Protection: Implementation Committee Report to the Minister (pg. 24).

regulatory instruments are not suited to all situations and it is therefore recommended that regulations be seen as a last resort when compliance is critical and other options have proved to be unsuccessful.

The use of non-regulatory tools in water quality protection has a proven and long-standing record of success. For many years, Conservation Authorities have employed education and incentive based Watershed Stewardship Services programs as an effective means of working with community groups, farmers, and private landowners in order to protect the quality of local water resources. Projects include watercourse fencing, stream bank erosion structures, manure storage and management systems, and proper decommissioning of unused wells. CA Watershed Stewardship Services have been quite successful. Between 2000 and 2004, a total of 7,700 water quality improvement projects were completed with 6,000 landowners and involving over \$20 Million in grants.

The success of these programs has been recognized at the community through to international level. As an example, in April 2006, the Grand River Conservation Authority's Rural Water Quality Program was provided with an "Outstanding Partnership with Business Award", one of seven rural groups to be honoured at the 7th Annual Awards of Rural Excellence. In 2003, the Hamilton-Halton Watershed Stewardship Program, of Conservation Halton and Hamilton Conservation Authority, received the Countryside Canada Award, which was administered by Wildlife Habitat Canada in partnership with Agriculture and Agrifood Canada. This national award recognizes farmers, ranchers, conservation and agricultural organizations for exceptional stewardship.

In the past, the Province has made financial commitments in support of on-the-ground stewardship programs. Successful funding programs have included the former "Clean Up Rural Beaches" Program and "Healthy Futures for Agriculture" Program, both of which addressed rural and on-farm activities and best management practices with the aim of improving water quality in local watersheds.

A more holistic approach to drinking water source protection, with tools focused on education and landowner assistance, may help to address local concerns related to implementation. Conservation Ontario therefore recommends that Source Water Protection Plans address both the regulatory instruments (e.g. permits, zoning, and minimum standards) under the *Act*, and the non-regulatory tools (e.g. education programs, stewardship incentives, research) that may be used to protect drinking water supplies. In addition to dealing with planning and regulatory matters, Source Water Protection Plans should also include recommendations for research, public outreach, and stewardship programs, which apply to the broader watershed, and encompass private systems.

Proposed Changes to the *Clean Water Act*

As identified in the previous section, it is recommended that a "Principles" Section be added to the *Clean Water Act* which could recognize the spectrum of tools available to bodies subject to the *Act* in developing source protection plans. Conservation Ontario recommends that the following wording be added to a "Principles" Section:

“In following with the purpose of this *Act*, source protection planning and implementation shall be undertaken consistent with the following principles:

- Implementation instruments prescribed under this *Act* will be used in conjunction with non-regulatory tools for successful drinking water source protection.”

It is further recommended that the Province promote a holistic source water protection program to Ontarians highlighting successful activities already being undertaken, partnerships that will be formed locally to develop source protection plans, and the spectrum of implementations tools which include instruments prescribed under the *Clean Water Act* in addition to technical and scientific research, public education/outreach, watershed stewardship programs, and incentive-based programs.

Funding

A model for long-term and sustainable funding of source water protection across the Province must be established in support of plan implementation. Example models from other Provinces may be used. In Manitoba, Conservation Districts, involving partnerships of rural municipalities and the Province, have been formed on a watershed basis in order to develop programs to effectively manage the natural resources of their area. Conservation Districts raise funds from member municipalities through a levy and the Province funds up to three times the levy raised. In addition, Conservation Districts also receive funds from external governmental and non-governmental sources, as well as from local ratepayers for specific projects.

Under Quebec’s Water Policy, the Provincial Government has committed to granting watershed agencies with stable funding to draft and monitor the implementation of water-related master plans for which watershed agencies are responsible. Arranging supplementary financing is the responsibility of local and regional players.

Conservation Ontario strongly encourages the Province to establish a long-term **Stewardship Fund**, administered by the appropriate Provincial agency, for implementation of non-regulatory tools by municipalities and rural landowners. Non-regulatory tools include, but are not limited to, technical and scientific research, public education/outreach, voluntary land acquisition and incentive-based programs. Under Manitoba’s *Water Protection Act*, a Water Stewardship Fund was established. The purpose of the fund is to provide grants: (a) in support of research, projects and activities contributing to water quality and quantity, (b) to assist in the implementation of watershed management plans or water conservation programs and, (c) to support other water management or water quality activities.

This approach is consistent with recommendations of the Implementation Committee.

Sections 7(5)(a), 40, 41(1), and 76(5) within the proposed *Act* relate specifically to responsibilities of the Conservation Authorities in supporting the Source Protection Committee and in the long-term source water protection implementation, reporting and monitoring. Conservation Ontario supports the intent of these sections and believes that

conservation authorities are well suited to this role. With this in mind, long-term, sustainable funding to support Conservation Authorities, in their role as Source Protection Authorities, will be required to undertake these responsibilities.

Conservation Ontario is very concerned about ensuring that there is access to adequate and sustainable resources for developing and implementing source protection plans. This is of particular importance with regard to funding for municipalities and rural landowners in undertaking their responsibilities for source protection plan implementation. While the *Sustainable Water and Sewage Systems Act* and the proposed *Clean Water Act* provide some tools for source water protection cost recovery for municipalities (i.e. additions to water and waste water fees and permit fees respectively) mechanisms are not currently in place for implementation using non-regulatory tools such as education, incentive-based programs, etc. Local agencies in many regions of the Province have little local capacity to take on additional responsibility without access to additional resources. Many farmers and landowners simply do not have the resources to participate in watershed stewardship programs. In addition, landowners may be reluctant to volunteer to participate financially in programs where the benefits may take several years to realize or they occur elsewhere in the downstream area. The benefits of rural best management practices are shared by watersheds, as a whole and are not just confined to individual landowners. Therefore, the cost of implementing conservation and restoration work should not be absorbed exclusively by the landowner. Conservation Ontario wants to be clear that successful and sustainable source protection planning will not succeed without a significant and long-term commitment of provincial funding.

Proposed Amendments to the Clean Water Act

Conservation Ontario recommends that a Section be added to the *Clean Water Act* which provides a mechanism for the establishment of a Stewardship Fund for implementation of non-regulatory tools in support of drinking water source protection.

3. Additional Comments

Conflict with other Provincial Legislation

While Section 96 of the draft *Clean Water Act* outlines how a decision will be rendered if provisions in the proposed *Act* conflict with the provisions of another Provincial Act (i.e. that with the greatest protection of water prevails), it does not address conflicting activities which are exempted from approvals in another piece of legislation.

The *Mining Act of Ontario* is one example of where conflict may occur. Section 78(1) of the *Mining Act* provides for the holder of a mining claim to enter a property for the purpose of conducting assessment work without being subject to regulation. This assessment work, if carried on in a vulnerable area may pose a significant risk to drinking water sources.

Other prescribed legislation may contain similar exemptions that may result in source protection risks. Conservation Ontario recommends that this concern be addressed in the *Clean Water Act*.

Proposed Amendments to the *Clean Water Act*

It is recommended that the *Clean Water Act* more specifically address conflict between the *Clean Water Act* and the other Provincial Legislation.

- Add a new section to the *Clean Water Act* addressing the need to ensure that specific works that may pose significant risks to drinking water sources are no longer exempted from approvals under prescribed legislation

Well Defined Roles and Responsibilities

Conservation Ontario strongly supports the watershed-based approach to developing source protection plans and the role of Conservation Authorities as recommended by Justice O'Connor. Conservation Ontario believes, however, that the proposed *Clean Water Act* must more clearly articulate the respective roles of all partners involved in source protection including Source Protection Authorities (Conservation Authorities), Municipalities, and the Source Protection Committees. The relationship between all partners must also be established and clearly articulated.

Specifically, the *Clean Water Act* should address the relationship between the Source Protection Committee and the Source Protection Authority. The Source Protection Authority can act as a liaison between the Province and the Source Protection Committee. The Committee, in concert with the Source Protection Authorities, should be responsible for engaging the public at all stages of planning and implementation to ensure a transparent process.

Proposed Changes to the *Clean Water Act*

Additional statements should be added to *Section 7* of the proposed *Clean Water Act* to address the relationship between the Source Protection Committee and the lead Source Protection Authority. Conservation Ontario recommends the following be added:

Include key roles and responsibilities under Section 7 for the Source Protection Committee including:

- Lead the development of the terms of reference, assessment reports and source protection plans in the source protection area or region for the purposes of this *Act*;
- Carry out consultations on the terms of reference, assessment reports and source protection plans in the source protection area or region for the purposes of this *Act*;
- Liaise with the lead Source Protection Authority in the source protection area or region for purposes of this *Act*;
- Utilize the lead Source Protection Authority in exercising and performing the Committee's powers and duties under this *Act*.

7(5) Assistance from source protection authority

- Amend subsection 7(5)(a) in order to clarify roles and responsibilities of the lead Source Protection Authority:
 - (a) Assist the Source Protection Committee that it establishes in exercising and performing the committee's powers and duties under this Act including but not limited to preparation of terms of reference, assessment reports and source protection plans and completion of public consultations;
- Add an additional subsection to clarify the relationship between the lead Source Protection Authority and the Source Protection Committee:
 - (c) Serve as a liaison between the Ministry and the Source Protection Committee for the purposes of this Act.
 - (d) Act as a liaison between the Source Protection Committee and the partner Source Protection Authorities in the Source Protection Region.

It is further recommended that in addition to changes within the *Clean Water Act*, Regulations related to the development of terms of reference require clear articulation of the roles and responsibilities for various Source Water Protection partners, including:

Municipal Roles:

- Municipalities continue their critical roles locally including technical work within wellheads and surface water intakes, develop and implement growth strategies, manage water and wastewater systems, and continue to do land-use planning and permitting.
- Municipalities should also be integral members of Source Protection Committees.

Source Protection Authority (Conservation Authorities) Roles:

- SPA should be responsible for coordination of technical work on watershed scale issues and should act as facilitators for the planning process, to bring the Source Protection Committee together and ensure stakeholders are involved at every phase of plan development and implementation.
- SPA should be responsible for monitoring and reporting on progress in meeting the objectives of the plan.

Source Protection Committee Roles:

- SPC should lead the development of the Assessment Report and the Source Protection Plan
- SPC, in concert with the Source Protection Authorities, should be responsible for engaging the public in the planning process, to weigh the scientific data, to assess threats to our water and to identify the best methods for reducing the risks.

Minister Approval of Entire Source Protection Plan

In Conservation Ontario's review of the *Clean Water Act* it appears that the Source Protection Plan and the Minister's subsequent approval are focused on addressing significant threats to drinking water. Medium and low threats to drinking water can be chronic problems that cause pervasive continual impacts, potentially rendering current or potential water supplies non-potable over time. Conservation Ontario recommends that the Minister approve the complete source protection plan which takes into account various degrees of risk and proposes appropriate actions based on the local watershed.

Closing Remarks

Conservation Ontario wishes to thank the Standing Committee for the opportunity to submit comments on the proposed *Clean Water Act*. Ontario's Conservation Authorities look forward to continued progress towards drinking water source protection in Ontario and their role in its development and implementation. Conservation Authorities are committed to ensuring successful implementation of source water protection; we look forward to continued collaboration with the Province and other partners toward this goal.