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The Honourable Laurel C. Broten
Minister of the Environment
12th Floor, 135 St. Clair Avenue West
Toronto, Ontario
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Re: Comments on the *Clean Water Act, 2005*, EBR Registry Number AA05E0001

Dear Minister Broten,

Congratulations on your introduction of draft source water protection legislation. The *Clean Water Act, 2005* offers new tools to protect water quality and quantity from existing and future threats. This will benefit end users of municipal and private drinking water and protect the environment and human health in Ontario.

The Canadian Institute for Environmental Law and Policy (CIELAP) is one of a number of organizations that submitted a joint Statement of Expectations in 2004. We are pleased that a number of the issues contained in that Statement have been addressed. However, we believe that a number of amendments could be made to proposed legislation to better protect Ontario's drinking water supplies.

Public Participation

Meaningful public participation is essential for an effective source protection regime. This should include participation at both the planning and implementation stages, through, at a minimum: involvement on source protection committees; financial support for participation outside of the committees; easy access to all relevant information; and the opportunity to make *EBR* submissions on the proposed terms of reference, assessment reports, and source protection plans.

The draft *Clean Water Act* itself contains few mandatory public consultation provisions, leaving the issue for the most part to the discretionary regulation-making powers of the Lieutenant Governor in Council. While the proposed regulations may include strong public participation measures, the legislative provisions of the Act should require and provide for public involvement at every stage of the planning and implementation process.

Recommendation

Mandatory public consultation and participation provisions should be added throughout the *Clean Water Act*. Without limiting the generality of the foregoing,

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there is an obvious need to involve the public in the development of the terms of reference and assessment reports.

Precautionary Principle

The precautionary principle should be specifically adopted into the CWA. The Ministry endorsed the principle in its Statement of Environmental Values, which is intended to inform the development of new environmental legislation in the province. The 2003 Advisory Committee report recommended that Source Protection Plans adopt a precautionary approach, and that recommendation was reiterated by the Implementation Committee in 2004 and in the Statement of Expectations.

Recommendation

The precautionary approach should be adopted into the purpose of the Act, and the Act should require its use in the development of Source Protection Plans

Great Lakes Protection

The Act should include mandatory provisions relating to Great Lakes protection, such as establishing targets for source protection areas which contribute to the Great Lakes, forming advisory committees, and requiring the preparation of reports. Although source protection areas which contain waters that flow into the Great Lakes are required to consider a number of Great Lakes agreements in their terms of reference, important provisions relating to the Great Lakes (see sections 74-76) are left to the discretion of the Minister. Given the critical importance of integrating source water protection with existing Great Lakes programs, projects, and negotiations, these sections must be strengthened and upgraded into mandatory obligations.

Recommendation

The new source water protection regime must be fully integrated with Great Lakes protection. When participating in inter-jurisdictional negotiations regarding the Great Lakes, the province must work to incorporate the principles of source water protection. Pursuant to these objectives, sections 74-76 of the Clean Water Act should be made into mandatory requirements.

First Nations peoples

The *Clean Water Act* does not contain mention of First Nations peoples' participation in source water protection planning or implementation activities.

Recommendation

In recognition and respect of First Nations' traditional environmental knowledge, as well as their aboriginal and treaty rights and claims, the province must pursue a strategy with the federal government and First Nations that will support the ability of First Nations (and their technical designates) to be full participants in watershed-based source protection planning and implementation.

Interim measures

The Act contains a number of positive interim measures. Source protection authorities are required to submit interim progress reports describing the measures which are being undertaken in vulnerable areas to stop certain existing or anticipated significant threats. Permit officials may require risk management plans for prescribed activities which pose significant threats in surface water intake protection zones or wellhead protection areas. Employees of source protection authorities or municipalities may enter a property to collect information for the preparation of the planning documents. If they become aware of a discharge which poses an imminent drinking water health hazard, they are required to notify the Ministry immediately. The Director must then provide notice of any action taken within 30 days.

Although these measures provide some reassurances that serious hazards will be addressed in a timely manner, they could be further strengthened by requiring the province, municipalities and conservation authorities to take immediate action with respect to high-risk activities and land uses, until such time as source protection plans are approved and implemented. Furthermore, no new policy instruments with the potential to cause significant or irreversible harm to water sources (including certificates of approval and permits to take water) should be issued until source protection plans are in place. Conflict provisions pertaining to *Planning Act* decisions, official plans, zoning bylaws, and prescribed instruments do not apply until after the source protection plans take effect.

Recommendation

The province, municipalities and conservation authorities should be required to take immediate action with respect to high-risk activities and land uses during the interim period. Additionally, no new policy instruments with the potential to cause significant or irreversible harm to water sources should be issued before the source protection plans are in effect.

Northern & Non-municipal Water

Source water protection should extend equally across the province to all watersheds in Ontario and to individual well users as well as municipally operated systems, as recommended in the 2004 Statement of Expectations. Many of the Act's provisions could extend significant benefits to all source waters in the province. However, protection for non-municipal systems, as well as areas outside established source protection areas, remains limited. It must be strengthened so that residents in the North and those who rely on private wells receive protection equal to that of southern residents on municipal systems.

There are several areas where the *CWA* could better ensure equal protection. For instance, identification of surface water intakes and wellhead protection areas is limited to those that supply municipal systems, unless others are identified by municipal resolution (s. 13e). Since these resolutions are not mandatory, the decision whether to include many private systems in the Assessment Reports and subsequent Source Protection Plans will be left to municipal councils. Likewise, areas in the North may benefit from source protection if the Minister enters into an agreement with one or more municipalities (s. 23), but since these agreements are not mandatory the decision rests with the province and municipal councils.

Recommendation

There should be mandatory inclusion of non-municipal source waters in Assessment Reports and Source Protection Plans, and mandatory development of Source Protection Plans outside established source protection areas.

Financing

Once Source Protection Plans are approved, they will be implemented by way of local measures and enforcement. In order to ensure that SPPs become effective protection tools, it is essential that municipalities and Source Protection Authorities have access to the necessary resources to finance this framework on a long-term basis.

While there are many potential sources of revenue for plan implementation that should be adopted (see recommendations from the Implementation Committee), two of the most logical are water taking charges and municipal water rates. The Ministry is already committed to applying charges for water taking, and since that measure will form an integral part of Ontario's overall water protection framework we strongly encourage you to expedite its introduction.

Equally critical are reforms to municipal water and sewer rates, both as a means of financing source protection and a tool for encouraging water conservation. Since these reforms will be accomplished primarily through regulations under the *Sustainable Water and Sewage Systems Act*, upon their introduction we will provide more detailed comments. However, we encourage you to work closely with the Ministry of Public Infrastructure Renewal to ensure consistency with the goals of this Act, a conservation-oriented approach and mechanisms to allow the equitable reallocation of funds towards source protection.

Recommendation

The introduction of water taking charges should be expedited and the revenue allocated towards source protection implementation. MOE should work closely with MPIR to ensure that municipal water and sewer rate reforms are consistent with the Clean Water Act and provide a mechanism to allocate an equitable portion of the revenue towards source protection implementation.

CIELAP believes that the *Clean Water Act, 2005* is a positive and necessary step towards protection our drinking water sources. We hope these recommendations will help ensure implementation of an effective, workable framework.

Thank you for the opportunity to provide input on this draft legislation. Please contact me if you wish to discuss any of these comments further.

Yours sincerely



Anne Mitchell
Executive Director