

Protecting Drinking Water Sources: The Clean Water Act

The idea sounds so simple: to assure the quality of drinking water, we must protect the watersheds and aquifers from which our water is drawn. Implementing this idea has proven to be far more complex, involving provincial and municipal levels of government, Conservation Authorities, and other groups. Six years after the May 2000 tainted water tragedy in Walkerton, and four years after the province committed to implementing the recommendations of the Walkerton Inquiry on watershed-based source protection, the roles, responsibilities, powers and funding arrangements for source protection are still being negotiated.

Watershed-based source protection was the topic of 22 out of Justice O'Connor's 93 recommendations in his Report of the Walkerton Inquiry (Part II), released in May 2002. Since that date, the Ministry of the Environment, the lead ministry to implement his recommendations, has literally reorganized itself around the need to develop and launch a province-wide drinking water source protection program. Three advisory committees, seven Environmental Registry notices, numerous working groups and countless meetings have focused on source protection. The province has also been providing money to Conservation Authorities and municipalities to conduct ground-water studies and hire staff for source protection planning. In November 2005, MOE announced \$67.5 million in spending on source protection – \$51 million on technical studies over five years, and \$16.5 million over one year to support Conservation Authorities in hiring staff and preparing for source protection.

In December 2005, MOE released its draft source protection law. Bill 43, the proposed Clean Water Act, 2005 (CWA), was introduced in the Legislature and posted as a proposal on the Environmental Registry. MOE also posted another proposal in December, sketching out some matters to be addressed in regulations under the proposed Act, and raising many questions for public comment. Second reading was completed and the proposed Clean Water Act, 2005, was referred to the Standing Committee on Social Policy. It is expected that the CWA will be passed, and draft regulations will be proposed, in the fall of 2006.

Some of the key elements of the proposed approach to source protection:

- *Source protection planning will be done locally, not provincially:* Bill 43 proposes to map out source protection areas on the basis of watersheds. Municipalities and Conservation Authorities will be charged with planning and implementation.

A “Source Protection Committee” will be established for each area, and will be in charge of identifying vulnerable areas in the watershed and threats to drinking water, as well as preparing a “source protection plan” to address the significant threats.

- *Municipalities will have new source protection powers:* New enforcement powers will be accompanied by a requirement that a municipality or its designate (e.g., the public health unit or Conservation Authority) appoint permit officials and inspectors. Their job will be to ensure the development and enforcement of risk management plans for significant drinking water threats, and to monitor building permits and other land use approvals for compliance with the source protection plan.
- *Source protection will trump other concerns:* The 2005 Provincial Policy Statement already calls for municipal planning to take source water protection into account, but uses terms such as “designated vulnerable areas,” which have little significance in the absence of legislation and planning in defining such areas (see pages 39-45 of the 2004/2005 ECO report). Under Bill 43, municipal land use plans and decisions under the *Planning Act* will all have to conform to a source protection plan. Where the source protection plan conflicts with other provincial plans (and where the Clean Water Act conflicts with other Acts and regulations), the plan that provides the most water protection will prevail. Instruments issued under a source protection plan will have primacy over requirements of the *Nutrient Management Act, 2002*.
- *Non-municipal wells are not protected:* The draft source protection framework does not include protection of private drinking water supply wells, although it allows a municipal council to pass a resolution designating non-municipal drinking water systems for protection. (For more on non-municipal systems, see articles on the Wells Regulation, pages 51-54, and on smaller drinking water systems, pages 107-111.)

The government has not yet committed to a course of action on a number of tough questions. Some issues to watch include:

- *Protecting waters beyond Conservation Authorities’ boundaries:* Bill 43 proposes to allow, but not require, the Minister of the Environment to make an agreement that municipalities prepare source protection plans for watersheds that do not have a Conservation Authority. For waters outside municipal as well as Conservation Authority boundaries, and for First Nations lands, it is not clear whether or how source protection planning will apply.
- *Protecting the Great Lakes:* With nearly three-quarters of all Ontarians living within the Great Lakes Basin, the Great Lakes are the source of drinking water for a majority of the province’s population. The Lakes are also the ultimate recipients of pollution from most of the populated watersheds in the province. Bill 43 proposes to allow,

but does not require, the Minister of the Environment to establish an advisory committee on the Great Lakes and to set targets for protecting the Great Lakes as drinking water sources. (Ontario may also choose to implement stronger drinking water source protection under Great Lakes agreements the province is currently implementing, reviewing or renegotiating. (See pages 14-19 for more on the Great Lakes Charter, the Canada Ontario Agreement and the Great Lakes Water Quality Agreement.)

- *Appeals process:* The proposed approach to source protection planning requires public consultation, but limits rights to appeal. A likely area of controversy will be a Source Protection Committee's "Assessment Report," which will draw lines on the map demarcating vulnerable areas such as wellhead protection areas as well as rank threats and decide which ones are significant enough to merit mandatory action. People whose activities or property values are affected by such decisions may want to challenge the science on which decisions are based, but the proposed Clean Water Act, 2005 does not appear to allow for appeals of such decisions.
- *Farmers and land owners:* MOE has proposed allowing municipalities to impose site-specific permits on farm operations, based on scientific risk assessments, to protect vulnerable drinking water source areas while still allowing farming in those areas. Farmers' concerns include adequate representation of agriculture interests and other landowners and industries on local source protection committees, the interaction between source protection and nutrient management programs, and the potential restrictions on farmers' land use.
- *Interim protection from significant threats:* After the CWA is passed, the source protection process (involving committees, Terms of Reference, Assessment Reports, Source Protection Plans and plan implementation) is likely to take years. Activities or land uses identified as significant threats will need to be addressed in the interim. MOE proposed giving municipalities interim order powers (and related liability protection) during the time period between an Assessment Report and approval of a Source Protection Plan.
- *Planning from best available data:* Integrating accurate, up-to-date land use, hydrogeology and water quality information in a format that source protection planners can use will be another challenge for the province. MOE, other ministries, Conservation Authorities and municipalities all have a role in managing land use, permit and approvals information, and monitoring the state of the water and changes in the environment.
- *Existing threats and cumulative impacts:* The source protection framework focuses on municipal powers to limit new land uses and manage threats from some current

activities. It is not clear whether the framework will be sufficient to address potential damage from historical activities and land uses, or to protect watersheds and aquifers from gradual degradation through accumulated impacts of lower-concern activities.

- *The costs of implementation:* The government has allocated tens of millions of dollars to municipalities and Conservation Authorities to conduct studies and initiate planning, but has not yet committed funds for implementing source protection plans.

ECO Comment

MOE's obligations are to protect the streams, lakes and aquifers of Ontario not only for drinking water supply, but because clean waters and healthy aquatic ecosystems are central environmental values. The ECO looks forward to an ongoing provincial commitment to source protection implementation, and will continue to monitor and report on developments in Ontario's watershed-based source protection program.

(For ministry comments, see page(s) 211-212.)

60% Waste Diversion by 2008 – Pipe Dream or Reality?



In June 2004, the Ministry of the Environment released "Ontario's 60% Waste Diversion Goal – A Discussion Paper," which described various options for achieving the goal of diverting 60 per cent of waste from disposal by the end of 2008. In the Paper, MOE proposed taking "a new comprehensive approach to waste diversion, one that will reduce the amount of waste generated, increase the rates of reuse and recycling, and reduce the amount of waste going to disposal." MOE noted that the goal of increasing the overall provincial diversion rate from 28 per cent in 2002 to 60 per cent in 2008 is ambitious, but that it was achievable if everyone, including the provincial government, is committed to finding solutions.

MOE's waste diversion goal applies to non-hazardous solid waste produced by the municipal sector, primarily residential waste such as Blue Box materials and leaf and yard waste. The goal also applies to non-hazardous solid waste produced by the construction and demolition (C&D) sector, and by the industrial, commercial and institutional (IC&I) sectors, which include restaurants, stores, offices, schools, hotels and manufacturers.