

TO: Chair and Members of the Authority
Meeting #3/07, April 27, 2007

FROM: Adele Freeman, Director, Watershed Management

RE: **CLEAN WATER ACT, 2006**
Comments to the Environmental Bill of Rights on the Draft Regulations

KEY ISSUE

Approval to make comments to the Ministry of the Environment and Conservation Ontario on the above-captioned Ministry of the Environment draft regulations due by May 4 to Conservation Ontario and by May 12, 2007 to the Ministry of the Environment.

RECOMMENDATION

THAT the Environmental Bill of Rights (EBR) comments by Toronto and Region Conservation Authority (TRCA) in Attachment 1 be endorsed;

THAT the comments be forwarded to Conservation Ontario and provided to the chair and mayors of the CTC (Credit Valley Conservation, Toronto and Region Conservation Authority and Central Lake Ontario Conservation Authority) watershed region municipalities;

AND FURTHER THAT TRCA, on behalf of the CTC watershed region, advise the Ministry of the Environment directly of our comments after consideration of the consolidated comments to be prepared by Conservation Ontario.

BACKGROUND

As has been reported in previous board reports, the Province of Ontario passed the Clean Water Act in October 2006. The Act is not yet proclaimed. The province has announced its intention to bring the Act into force when the first set of regulations is ready to be promulgated, likely in mid-2007.

The Clean Water Act, 2006 gives the Ministry of the Environment the authority to make regulations on a number of matters. The first phase of draft regulations deal with:

- establishing source protection areas and source protection regions;
- governing the size of a source protection committee (SPC), the appointment of members to the source protection committee and the committee operations;
- setting out the requirements for the Terms of Reference product to be prepared by the SPC;
- time limits for the submission of the Terms of Reference, assessment report and source protection plan; and
- a miscellaneous regulation which specifies when a drinking water system is deemed to be “planned”, what drinking water systems cannot be included in a Terms of Reference, the protocol for notification of the Ministry when an imminent drinking water hazard is discovered, adding to the list of Great Lakes agreements that must be considered by the SPC, and what municipal systems can be exempted from a source protection plan.

The Ministry of the Environment posted these five draft regulations under the Clean Water Act, 2006, on the EBR registry on April 12, 2007 for comment (EBR Registry Number 010-0122). Comments are due by May 12, 2007.

Copies of the following are available via the internet at the addresses provided:

EBR posting 010-0122

<http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTAwMzk2&statusId=MTQ5OTg1&language=en>

Draft regulations under the Clean Water Act, 2006

Source Protection Areas and Regions

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/Areas%20and%20Regions%20regulation.pdf

Source Protection Committees

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/Source%20Protection%20Committees.pdf

Terms of Reference

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/Term%20of%20Reference.pdf

Time Limits

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/Time%20Limits.pdf

Miscellaneous

http://www.ene.gov.on.ca/envision/env_reg/er/documents/2007/miscellaneous.pdf

Clean Water Act, 2006

http://www.e-laws.gov.on.ca/DBLaws/Source/Statutes/English/2006/S06022_e.htm

This report provides comments to be made in response to the EBR posting and requests the approval of the Authority to submit them as outlined in Attachment 1 to Conservation Ontario and provide to the chair and mayors of the CTC watershed region municipalities, and submit directly on behalf of the CTC Source Protection Region following review the consolidated comments prepared by Conservation Ontario.

At Authority Meeting #11/06, held on January 26, 2007, Resolution #A307/06 was approved, authorizing the submission of comments on the "Discussion Paper on Source Water Protection Committees under the Clean Water Act, 2006", posted on the EBR registry on January 2, 2007 for comment (EBR Registry Number PA06E0013). The comments recommended in this report address the draft regulations posted by the Ministry after consideration of the comments received on the above captioned discussion paper.

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Date: April 25, 2007

Attachments:1

Attachment 1

**COMMENTS BY
TORONTO AND REGION CONSERVATION AUTHORITY
AS LEAD OF THE PROPOSED CTC¹ SOURCE PROTECTION WATERSHED REGION
AND ON BEHALF OF THE PARTNER CONSERVATION AUTHORITIES
(Credit Valley Conservation and Central Lake Ontario Conservation Authority)
ON THE MINISTRY THE ENVIRONMENT'S
FIRST PHASE OF REGULATIONS UNDER THE *CLEAN WATER ACT, 2006*
POSTED APRIL 12, 2007 ON THE ENVIRONMENTAL BILL OF RIGHTS REGISTRY (EBR
#010-0122)**

BACKGROUND

Purpose of the Current Ministry of the Environment Posting

The *Clean Water Act, 2006* gives the Ministry of the Environment the authority to make regulations on a number of matters. The first phase of draft regulations deal with:

- establishing source protection areas and source protection regions;
- governing the size of a source protection committee (SPC), the appointment of members to the source protection committee and the committee operations;
- setting out the requirements for the Terms of Reference product to be prepared by the SPC;
- time limits for the submission of the Terms of Reference, Assessment Report and Source Protection Plan; and
- a miscellaneous regulation which specifies when a drinking water system is deemed to be “planned”, what drinking water systems cannot be included in a Terms of Reference, the protocol for notification of the Ministry when an imminent drinking water hazard is discovered, adding to the list of Great Lakes agreements that must be considered by the SPC, and what municipal systems can be exempted from a source protection plan.

The *Clean Water Act, 2006* received Royal Assent on Oct. 19, 2006. It has not yet been proclaimed and therefore is not currently in force. The government intends to proclaim the Act when this first set of key regulations are promulgated, likely in mid-2007.

The Ministry has posted these five draft regulations under the *Clean Water Act, 2006*, on the Environmental Bill of Rights (EBR) registry on April 12, 2007 for comment (EBR Registry Number 010-0122). Comments are due by May 12, 2007.

¹ CTC is the name of the proposed source protection watershed region comprised of the combined boundaries of the Credit Valley, Toronto and Region, and Central Lake Ontario conservation authorities.

Source Protection Areas and Regions Regulation

The *Clean Water Act, 2006* is intended to protect existing and future sources of municipal drinking water. A key focus of the legislation is the production of locally developed, science based reports and source protection plans. Section 4 of the Act provides that the area over which a conservation authority has jurisdiction is a source protection area. This draft regulation establishes:

- a) source protection areas which are each of the conservation authority areas of the Credit Valley Conservation (CVC), Central Lake Ontario Conservation Authority (CLOCA) and Toronto and Region Conservation Authority (TRCA);
- b) the CTC source protection region which is comprised of the three source protection areas corresponding to CVC, TRCA and CLOCA (the CTC is one of 19 proposed regions in Ontario); and
- c) TRCA as the lead source protection authority for the CTC source protection region.

Recommended EBR Comments

- 1) *The list of participating municipalities in Table 1 of the proposed regulation should be amended for Toronto and Region Conservation Authority (line 37) by removing reference to the Town of New Tecumseth. The rationale for this request is:*
 - a. *the Town of New Tecumseth is not one of the participating municipalities under the Orders-in-Council #2127/85 and #49/74 under the Conservation Authorities Act establishing the current jurisdiction of TRCA;*
 - b. *the area of the Town of New Tecumseth which is within the proposed TRCA source protection area based on the new provincial mapping of the surface water boundaries does not contain any municipal drinking water supply nor well head protection area; and*
 - c. *the area of the Town of New Tecumseth within CTC is approximately 10 square meters which is negligible.*
- 2) *Clarification is requested on which municipalities need to be consulted by the source protection region and the CTC SPC in carrying out their responsibilities. Is it the list included in Table 1 (with the exception of the Town of New Tecumseth) or does it also include the entire upper and lower tier municipalities within the CTC? It is recommended that the list of municipalities required to be consulted be restricted to those in Table 1 as the lower tier municipalities within the regions of Halton, Peel, York and Durham can be represented and consulted by their respective regional councils and staff.*
- 3) *If there is any consideration by the province to aligning the boundaries of the conservation authorities under the Conservation Authorities Act to the boundaries of the source protection areas as proposed in this regulation, we request that the province undertakes an analysis of the impacts of any changes on the current value assessment and the financial implications for each of the conservation authorities.*

Source Protection Committees Regulation

The lead source protection authority is responsible for establishing the source protection committee for each source protection region within 80 days of the regulation being in force. Under Section 7 of the Act, the Minister is responsible for appointing the chair after considering recommendations from the lead source protection authority *(There is no time limit on the Minister's decision nor on the source protection authority getting the nominations before the Minister. It is desirable to have the chair in place as early as possible to aid in the establishment of the SPC and being able to commence the tasks by the SPC. TRCA is currently seeking expressions of interest from potential candidates until April 30, 2007).*

The size of the committee, including the chair, is set out for each source protection region – the CTC SPC is set at 16 members (there are no larger sizes in the proposed regulation, other regions' SPCs range in size from 10, 13 or 16 members including chair). The 15 CTC SPC members are to be selected from representatives of watershed stakeholders:

- 1/3 of members representing municipalities with the nominees selected jointly by council's of the municipalities;
- 1/3 of members reflecting the economy of the source protection region - agriculture, industry and commercial; and
- the remaining 1/3 to reflect other interests including the interests of the general public.

The draft regulation sets out the term of appointment for the source protection committee, including replacing vacancies, the scheduled staggered replacement of members to ensure no more than 1/3 of the members are replaced in one year and rules to ensure that the sectoral representation of 1/3, 1/3, 1/3 is maintained when members are replaced. The term of the initial SPC is until the first source protection plan has been approved. This first term, taking into account the staggered replacement, could be seven years for 1/3 of the initial SPC.

Replacement terms are for three years. There are no limits on reappointing members.

As lead source protection authority (SPA), TRCA will be required to conduct a transparent and time limited process to identify members through newspaper advertisements and posting on the internet at a minimum. TRCA will be required to consult with municipalities by sending notices to the clerks of the municipalities within 30 days of the regulation coming into force, specifying a date for councils to jointly provide the list of municipal representatives to be appointed (it is not clear if the municipalities are only the participating municipalities listed in Table 1 of the Source Protection Areas and Regions regulation or all upper and lower tier municipalities). If the municipalities do not provide the right number (too few or too many) or within the time limit, then TRCA will be required to select municipal representatives. TRCA staff believes that it is preferable for municipalities to select their members.

For the remaining two sectors, public comment is required on the composition of the committee and an open process to solicit applications. The time limit for the lead source protection authority to establish the SPC is a maximum of 80 days after the regulation is promulgated with the following intermediary time limits:

- 1) publish notices within 30 days on composition of SPC and application process;
- 2) receive within 21 days of notice being published, comments on proposed SPC composition.

TRCA staff has held preliminary discussions with senior staff of the municipalities responsible for municipal drinking water supplies within the CTC to identify possible processes for selecting municipal members. Further discussions will be undertaken in advance of the regulations being finalized in order to be in a position to meet the timelines for establishment of the committee. The municipalities are concerned that the 5 municipal seats on the SPC are not enough to provide adequate representation. In the previous submission to EBR on the Discussion Paper, TRCA identified the need for a larger number of municipal seats and a higher proportion of the overall membership of the SPC. The draft regulation has not provided for this.

Recommended EBR Comments

- 1) *It is recommended that the size of the CTC SPC be increased to permit more municipal members, in particular reflecting the municipalities responsible for drinking water sources within the CTC. In the CTC, there are 8 such municipalities (Halton – groundwater supplies, Peel – groundwater and Lake Ontario supplies, Toronto – Lake Ontario supplies, Durham - groundwater and Lake Ontario supplies, Town of Erin, Town of Orangeville and Town of Mono – groundwater supplies). There are significantly different technical and policy issues associated with protecting groundwater sources as compared to Lake Ontario sources. There is a considerably different capacity to implement source protection plans amongst the lower tier headwaters municipalities versus regional/single tier municipalities which needs to be considered in developing the source protection plans and policies. Ideally another 2 municipal seats would provide the breadth of representation for these different perspectives.*
- 2) *It is recommended that the formation of the SPC should be completed within 180 days rather than 80 days. An effective source protection committee which adequately represents the watershed stakeholders is a fundamental component of the governance introduced under the Clean Water Act and the proposed regulations. Sufficient time is required to establish and make the SPC functional. The timelines for establishing the source protection committees are not reasonable given the need to:*
 - a. *provide municipal councils adequate time to determine a process, select their representatives and have them endorsed by all the municipal councils;*
 - *The concept of the SPC and the proposal for all councils to endorse the members is new and will require councils to consider how to undertake this.*
 - *Municipal council meetings in the large CTC municipalities require agenda items and staff reports to be submitted at least 4 to 6 weeks in advance.*
 - *The council meetings are established on a yearly basis and the scheduling of the various municipal councils may make it virtually impossible to meet the process and timeline requirements of the regulation to achieve council resolutions from all.*
 - *There is no time to go back through the process should there be changes required to the slate of nominees.*
 - b. *consult with stakeholders and the public on the proposed committee composition and undertake discussions if problems are identified;*
 - c. *consult with sectoral groups to identify candidate representatives;*
 - *The Ministry has cautioned the proposed source protection regions about not proceeding too far on initiating discussions in advance of the legislation and regulations coming into effect;*
 - *The expectations and rules have been evolving in the various provincial discussion documents and draft regulation.*

- d. *Attract suitable candidates given the uncertainty in remuneration, roles, qualifications and the time commitment and timetable for the work to be completed by the SPC.*

Terms of Reference Regulation

The SPC under Section 8 of the Act is required to produce a Terms of Reference setting out the work plan which identifies major tasks to be undertaken and assigns roles and responsibilities in the source protection planning process for each source protection area. The Act also requires that the SPC consults with municipalities, band councils (where they exist within the source protection area) and the public. The source protection authority is permitted to comment on the Terms of Reference and is then responsible for submitting all the comments and the proposed Terms of Reference to the minister for approval.

The draft regulation sets out contents for the terms of reference, provides municipal councils the right to identify work they wish to undertake, the public consultation process and under what conditions the SPC may propose to amend the Terms of Reference (requires consultation and submission to the Minister for approval).

Time Limits Regulation

Time limits have been proposed for the submission by the SPC and the source protection authority for each of the three products required under the *Clean Water Act*.

The initial Terms of Reference must be submitted by the SPC to the source protection authority within nine months of the appointment of the first chair, and by the source protection authority to the minister within eleven months of the appointment of the first chair. These dates are each reduced by two months for subsequent Terms of Reference when required for review of the source protection plan.

The second product required under the *Clean Water Act* is the Assessment Report. The draft regulation providing more specific guidance on the contents of the Assessment Report will not be posted until after the Act is proclaimed – perhaps in the fall of 2007. The Time Limits regulation requires that the assessment report is submitted by the source protection authority within two years of the appointment of the first chair of the SPC. Future assessment reports (for revisions of source protection plans) must be submitted within two years of the date specified by the minister in the approval of the source protection plan.

The third product required under the *Clean Water Act* is the source protection plan. The draft regulation specifying the contents of the assessment report will not be posted until after the Act is proclaimed. The Time Limits regulation requires that the source protection plan is submitted by the source protection authority within five years of the appointment of the first chair of the SPC. Future source protection plans must be submitted within five years of the date specified by the minister in the approval of the source protection plan.

Recommended EBR Comment

It is recommended that the time limits must be extended to provide adequate time to complete the mandatory actions required of the SPC, municipalities and the source protection authorities under the legislation and regulation.

- 1) *It is recommended that the time limit for submission of the **initial** Terms of Reference by the SPC to the source protection authority, and by the source protection authority to the minister should each be lengthened by three months. This lengthened time reflects that the formation of the SPC will require additional time and there is considerable work to be completed by the SPC before the Terms of Reference can be submitted. The SPC is required to develop Rules of Conduct, Conflict of Interest Guidelines, become familiar with the technical work already undertaken by the conservation authorities and the municipalities with the funding provided by the province, consult with the municipalities to determine what additional drinking water systems are planned or should be exempted and if any additional water supplies are to be designated for source protection planning (such as a cluster of private wells). Work plans, associated budgets and responsibilities must be assigned. Municipal council resolutions are required regarding a number of issues and mandatory public consultation must be undertaken. The lead source protection authority will need to review the work plans and budget to determine any issues/concerns as they are responsible for administering the provincial funds for the SPC to undertake the source protection planning work.*

- 2) *It is recommended that the time limit for submission of the Assessment Report be changed to **eighteen months from the approval** of the Terms of Reference by the minister. This extension is recommended both:*
 - a. *to provide adequate time to complete both the necessary technical work and the mandatory consultations; and*
 - b. *to ensure that the SPC has the decision of the minister regarding the terms of reference as a necessary precursor to carrying out the work as planned.*

- 3) *It is recommended that the time limit for submission of the source protection plan be changed to **thirty six months from the approval** of the assessment report by the minister. This extension is recommended both:*
 - a. *to provide adequate time to complete both the necessary planning and policy development work and the mandatory consultations; and*
 - b. *to ensure that the SPC has the decision of the director regarding the assessment report as a necessary precursor to complete the source protection plan.*

Miscellaneous Regulation

The proposed regulation contains a number of unrelated items which clarify and expand on a number of provisions of the Act:

- 1) The approvals which must be received for a water supply to be “planned” are described.
- 2) The regulation sets out the details on who, how and under what circumstances must imminent drinking water threat be reported.
- 3) The St. Lawrence River Basin Sustainable Water Resources Agreement is added to the list of Great Lakes agreements that must be considered by the SPC in carrying out its work.
- 4) Water supplies that are not to be considered in any assessment report are set out, in particular, municipal systems which are going out of service within five years and individual wells except in specific circumstances.