



Transportation and Works Department

August 17, 2004

Ms. Dawn Landry
Policy Advisor, Strategic Policy Branch
Ontario Ministry of the Environment
135 St. Clair Ave. West, 11th Floor
Toronto ON M4V 1P5

Dear Ms. Landry:

Re: York Region Staff Comments on EBR Registry No. AA040002
Draft Drinking Water Source Protection Act
Our File: WR046, P12

The Province of Ontario posted the Draft *Drinking Water Source Protection Act* (DWSPA) on the Environmental Bill of Rights (EBR) Registry on June 23, 2004 and allowed a 60 day period to receive comments. Staff of York Region has prepared the following comments to be considered by the Ministry of the Environment (MOE) in response to this EBR posting. Given the timing constraints of this posting, these comments have not yet been endorsed by Regional Council, however a copy of our report and this letter will be forwarded to Committee and Council in September.

In order for any Source Protection initiative to be effective the objectives, process, and roles and responsibilities, and the ultimate effects must be clearly understood and supported by all stakeholders. This represents a substantial challenge and the Province is to be commended for the efforts to date in developing the draft *Drinking Water Source Protection Act*. The DWSPA builds nicely on the efforts of the Advisory Committee on Watershed-Based Source Protection Planning and on the "White Paper on Watershed-Based Source Protection Planning and the ensuing public consultation. The draft DWSPA provides greater clarity into the processes, responsibilities and requirements for developing Source Protection Plans and addresses many of the issues raised in public consultation.

York Region staff comments on the draft DWSPA are organized to address:

- 1) Planning and Implementation Issues; and
- 2) Specific Technical Details and Inconsistencies.

1) Planning and Implementation Issues

The Draft DWSPA raises many questions and issues relating to the meaning of source protection, how source protection will be carried out, what the effects will be, and what timing will be applied to this initiative. To assist the Ministry, York Region's comments and recommendations are divided into five categories:

- i) Complete Information-Base for Decision-Making
- ii) Additional Information For Municipalities
- iii) Legislative Primacy and Conformities
- iv) Financing and Technical Resources
- v) Timing

i) Complete Information-Base for Decision-Making

The ultimate goal of this legislation is to achieve an effective mechanism to ensure that drinking water sources are protected and secure. All stakeholders need to more clearly understand the ultimate effects of this legislation. To do so will require:

- The complete Act.
- All proposed Regulations.
- All proposed Technical Guidance Documents and "Standards".
- Clarification of the primacy surrounding this legislation and the relationships with other initiatives (Oak Ridges Moraine Conservation Act and Plan, Greenbelt Protection Act and Plan, Provincial Growth Management initiatives, Planning Reform, etc.).
- Outline of the proposed mechanisms to "implement the plan".
- Knowledge of the total costs and how it will (can) be paid for.
- Outline of what the likely effects will be and ways to balance local priorities.
- An indication of the realistic time frame expected to develop and implement Source Protection, which should be scheduled according to priorities.
- Additional clarity of roles and responsibilities of all participants (not just the boards).
- Definition of who will actually be doing the work (where will these resources come from).
- Outline of expected responsibilities and the liabilities that come with these.

Recommendation:

The Province should endeavour to substantially address the above items/issues prior to introducing legislation. Given some of the technical challenges, experience in the form of pilot studies to achieve the desired product would provide valuable input to fine-tune legislation before it is implemented universally.

ii) Additional Information for Municipalities

In order to fully appreciate the potential effects of proposed Source Protection under the draft *DWSPA*, Municipalities will also need to have:

- Improved clarity of expected roles, responsibilities, liabilities.
- Support for additional resources required (financial and staff).
- Additional clarity on how the intended legislation is to fit into the Municipal Planning Process and how Source Protection Plans or Wellhead Protection Plans would be incorporated into Municipal Official Plans.

Recommendation:

The Province should provide municipalities with a clearer vision of their expected role in the Source Protection Planning and Implementation Initiative prior to introducing the legislation. This vision should communicate how local concerns, issues, and direction can be respected and maintained in the Source Protection Plans.

iii) Legislative Primacy and Conformities

There is a need for municipalities and other stakeholders to clearly understand the legislative primacy of the draft *DWSPA*. In addition, further clarification is needed regarding the potential relationships between the draft *DWSPA* and other existing and proposed legislative initiatives, such as:

- Oak Ridges Moraine Conservation Act/Plan
- Green Belt Protection Act/Plan
- Growth Management Act
- Planning Reform
- Safe Drinking Water Act
- Environmental Protection Act
- Ontario Water Resources Act, and
- Nutrient Management Act.

Recommendation:

*The Province should clarify relationships of the *DWSPA* with other existing and proposed legislation giving particular attention to the intended primacy.*

iv) Financing and Technical Resources

Source protection is expected to be a very expensive initiative. Costs will be incurred in the development of plans, implementation, monitoring, and enforcement. While the draft *DWSPA* indicates that substantial responsibility for directing the preparation of the Source Protection Plans will be carried by the Conservation Authorities (whose funding is provided by their municipal partners), other agencies and stakeholders will be incurring costs to participate. Once the plans are prepared, all agencies are likely to incur further costs in the implementation, monitoring, and enforcement. It is also likely that there will be a long-term process to review/update the Source Protection Plans. Secure, long-term funding sources will be required to ensure that the proposed objectives can be achieved.

In addition to the general requirements of financing, much of the work required to implement the source protection objectives will need to be undertaken by trained and experienced staff. From a municipal perspective, these staff must understand both the technical issues of watershed management and the social issues related to planning, development and public consultation. It is clear that our already heavily-burdened staff will be expected to carry additional weight in development and implementation of source protection and that programs to train existing and future staff to assist in developing and implementing source protection plans will need to be a priority.

Recommendation:

The Province should clarify where the expected costs of source protection will come from and be prepared to provide substantial funding toward the development, implementation, and future maintenance of Source Protection Plans.

The Province should develop programs to encourage the training of qualified personnel to be available to conservation authorities and municipalities to assist in Source Protection planning and implementation.

v) Timing

The draft *DWSPA* does not provide any clear indication of expected time-lines associated with proposed source protection initiatives. It is anticipated that some of the expected timing constraints will be introduced with the accompanying legislation or in Regulations that should accompany the legislation. All agencies and stakeholders will require a clear understanding of the timing implications. Timing will also have a direct effect on the availability of resources needed to meet the objectives.

Recommendation:

The Province should clarify the intended time-frames expected and provide local agencies with the tools and abilities to recognize priority situations and establish an acceptable level of protection based on likely risks and available resources.

Specific Technical Details and Inconsistencies

The draft *DWSPA* raised some specific questions and issues relating to technical issues and perceived inconsistencies. Comments and recommendations are provided in the following seven categories:

- i) Approval Provisions
- ii) Liability Issues
- iii) Wellhead Protection Requirements/Provisions for Municipalities
- iv) Permit To Take Water Process
- v) Power To Take Immediate Action
- vi) Technical Standard/Guidance Requirements
- vii) Minor Technical Details

i) Approval Provisions

The draft *DWSPA* provides approval provisions for the Source Protection Board for the “Terms of Reference” and the “Assessment Report”. The Source Protection Board does not have any formal authority to approve the Source Protection Plan before it is forwarded to the Minister of the Environment. This appears to be an inconsistency to regional staff. There is also no clear role identified for municipalities to comment on or state official positions on the Source Protection Plan.

Recommendation:

The Province should revise the DWSPA to require participating municipalities to review the Source Protection Plan as prepared by the Source Protection Committee and provide comments to the Source Protection Board for consideration. These comments should be forwarded to the Minister along with the Source Protection Plan.

ii) Liability Issues

The measures outlined in the draft *DWSPA* could produce substantial liability (direct and indirect) for public agencies and private citizens/groups. These liabilities should be documented and provisions added to ensure that public and private agencies can appreciate the risks or are saved harmless by the legislation.

Recommendation:

The Province should provide additional documentation of the potential liabilities associated with Drinking Water Source Protection in a format that public and private agencies can understand the risks.

A "save harmless clause" should be added to protect Boards, Committees and delegates, including municipalities, their employees and their political representatives.

iii) Wellhead Protection Provisions for Municipalities

The draft DWSPA does not directly address the issue of Wellhead Protection. Wellhead Protection is a priority for municipalities serviced by groundwater and is a required element for those municipalities on the Oak Ridges Moraine. Source Protection Legislation is expected to provide the basis for the legal powers, responsibilities, standards, guidance, etc that are required for municipalities to implement effective wellhead protection programs. The DWSPA focuses on the initiatives that will likely be led by the Source Protection Boards (Conservation Authorities) but Municipalities are both responsible for delivering water and far better placed to be able to deliver programs that will ensure protection of groundwater to municipal wells.

Definitions and provisions for the identification and establishment of wellhead protection areas in official plans and zoning by-laws are required in the Draft DWSPA

Recommendation:

The Province should review the Draft DWSPA and revise to include specific reference to municipal wellhead protection and the responsibilities and powers that will be provided to municipalities to make it effective.

Definitions and provisions for the identification and establishment of wellhead protection areas in official plans and zoning by-laws are required.

iv) Permit To Take Water Process

Management of water use will be a key component of effective source protection plans. The Draft DWSPA does not currently provide any direct reference to the current or potential future processes that will be implemented to ensure that water is used in a sustainable fashion. Concurrent with the draft DWSPA, the MOE has also requested comments on proposed amendments to the Water Taking and Transfer Regulation. The proposed amendments to the Water Taking and Transfer Regulation do not appear to address the breadth of concerns that will accompany source protection.

Recommendation:

The Province should ensure that Drinking Water Source Protection Legislation provides appropriate tools and responsibilities to the MOE, conservation authorities, and municipalities to ensure that water use can be managed within the objectives of source protection planning.

v) Power to Take Immediate Action

The draft DWSPA provides many powers to the SPB and its delegates to enter properties to collect data and obtain samples. It is likely that some site visits and site inspections will reveal conditions that present a clear and immediate risk to water sources (definitions/guidance will be required). An example could be untreated effluent being discharged directly into a receiving stream without approvals. The SPB or its delegate must have the ability to legally require a stop and require correction to these activities when found.

Recommendation:

Powers should be provided to the Source Protection Board and their delegates to order private land owners to stop or correct any activities that are observed to present a clear and present risk to the drinking water sources.

vi) Technical Standard/Guidance Documents

The Technical Standards and Guidance Documents are not yet available. Similar standard and guidance were also not provided with the Oak Ridges Moraine Conservation Plan in April 2002 and many are still not available. This has substantial implications on being able to deliver the required plans and policies by the dates established in regulation. The draft DWSPA must be accompanied, not only by the proposed regulations, but also by the Technical Guidance documents in order for municipalities and other stakeholders to adequately address implementation issues.

Recommendation:

The Province should provide all Technical Standards and Guidance Documents relevant for enacting the DWSPA so that all parties can clearly understand the expected commitments.

vii) Minor Technical Details

Some of the minor technical details that are observed in the Draft DWSPA include:

- The powers for collection of information and samples from private land are not accompanied by a responsibility to communicate the findings of work to private land owners. This should be included.
- There is no clear provision to illustrate how these measures will protect the quality of private wells.
- References to classes of drinking water systems in Section 7(2) should be consistent with the designations in the Safe Drinking Water Act.
- Clarity should be provided regarding the municipality's role and responsibilities with respect to private drinking water systems that could pass into municipal ownership if owner's default on their responsibilities.

Recommendation:

Include a provision that all findings of work conducted on private properties will be communicated to the owner or delegate.

Address the issue of protection of water quality for private wells.

Clarify issues relating to designated drinking water supply systems under the Safe Drinking Water Act.

We trust that these comments will be considered appropriately. Please do not hesitate to contact me should you have any questions or require further clarification.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lloyd Lemon', with a long horizontal flourish extending to the right.

Lloyd Lemon, M.Sc., P.Geo
Program Manager, Water Resources Protection

LAL/BJ/sp

Copy to: Michael Garrett, Chief Administrative Officer
Kees Schipper, Commissioner, Transportation and Works
Bryan Tuckey, Commissioner, Planning and Development Services
Sandra Cartwright, Commissioner, Corporate Services
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